
ALLEGHENY COUNTY

Office of the Public Defender
Assessment

FINAL REPORT

Presented to
Michael Wojcik
Allegheny County Solicitor

OCTOBER 20, 2008



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Request for report
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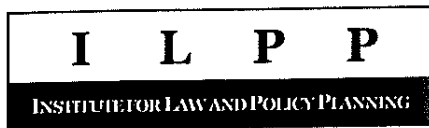
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Dear Mr. Wojcik:

The attached report is ILPP's assessment of the Allegheny County Office of the Public Defender (OPD). It is addressed to you at your request as a means of ensuring that the important defense function is properly accomplished, and to provide suggestions for improvements in both service and cost-effectiveness.

It is a privileged and confidential study, but of course it belongs to your office and you are free to release it in parts or as a whole. It is preliminary inasmuch as there is very little good data with which to make certain findings and there are many related agencies that are instrumental, but that were not studied.

Although the study provides warnings and makes findings and recommendations which can be put into effect immediately, it must be stressed that the defense function is also impacted heavily by other agencies, including the courts, prosecution, and related offices that serve subpoenas, provide lab results, handle conflicts, and participate in the broader arena of the administration of justice.

In particular, the courts are extraordinarily important to the public defender function. For example, complaints of delays aimed at the defense may well be influenced as well by other agencies, but could not occur without the involvement and allowance of the courts.

In many ways, beyond the findings and recommendations of this study which focus on the defense of indigents, there is an underlying finding that the court system (which includes prosecution and all the related offices noted above) seems in need of a strengthened court case

management system and calendaring mechanism. Also, the magistrate element, which is far flung and in many ways not efficient in moving cases, may need re-engineering and case management. These twin areas of court administration bear heavily on the defense function.

Lastly, although there is a diverse mix of individuals with varying career histories, the defense function in the county is basically conducted by lawyers who are committed to assisting their indigent clients and in many ways feel unappreciated by the larger county government community. Their sentiments should be seen in light of the larger system issues, which, in some ways, make the defense function the system's stepchild, and in other ways, provide a handy catchall for the faults of the other agencies.

System reform requires a holistic perspective. And, there is much work to be done now.

Sincerely,



Alan Kalmanoff
Executive Director

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Executive Summary

This assessment of the Allegheny Office of the Public Defender demonstrates that the agency's current program is dysfunctional.

The OPD lacks administrative direction and especially lacks efficiency. This inefficiency is partially caused by delay and to the OPD's role in system-wide court case management problems. Poor administration furthers the problems caused by shortfalls in space, equipment and technology, a long-standing culture of private practice and lawyer autonomy, inadequate management supervision and incentives, and an absence of adequate policies and procedures.

This assessment shows that conditions within the OPD hamper its ability to provide client representation. A lack of leadership and efficiency also drives excessive client jail time, costing millions, and wastes staffing resources. Immediate actions must be taken to break the cycle of delay, end gaps in coverage, reduce inefficiency, lower jail crowding, and avoid liability.

Introduction

In late 2007, the Institute for Law and Policy Planning (ILPP) was asked to review the operations the Allegheny County Office of the Public Defender (OPD) in response to concerns expressed by judges and others about high rates of continuances and operational inefficiencies in the County's criminal defense function. The County's defense system was itself in litigation until the end of 2004, concerning the adequacy of constitutionally required representation of indigent defendants in the county's criminal courts, including claims of lax administration, gaps in representation, inadequate staffing, hours and attendance of attorneys, coordination with other agencies, and some claims of high caseloads and/or inadequate staffing reflected in surges in the use of conflict counsel.

The work plan for the assessment involved a series of interviews during April 2008 with key members of the OPD, collection of available data (rather than development of new data), and interviews with the County Bench and other officials. These efforts were followed by a day-long workshop including the OPD's management team and representatives of various staffing levels, which was aimed at "organizational diagnosis". This was to be accomplished by the agency's own leadership, followed by a brief report to the Chief Public Defender, who serves as Director of the OPD.

Because the chief concern expressed by the judges has been the very high rate of continuances in criminal cases, some data from various and generally inconsistent sources were gathered on the number, rate, and causes of continuances, as well as attorney assignment and workload (in addition to caseload and number of appearances, all of which are inconsistent measures). Other concerns included the lack of management and supervisor accountability, a backlog of cases, and a lack of meaningful performance objectives for assistant public defenders, coupled with little or no real use of existing practice and performance standards. Additionally, there is a long list of less important but noted office management issues including the unavailability of complete files, problematic scheduling of lawyers, phone system accountability issues, etc.

After the April interviews and a day-long workshop, the follow-up interviews were conducted over the next six weeks with additional attorneys, judges, court officials, etc., paralleling the collection of additional readily accessible data on staffing, caseloads and assignments, delays, staff turnover, budget, etc.

This review looks briefly at the evolution of the OPD and current operations, and examines some of the criticism, focusing in part on the incidence, causes, and consequences of case delay.

Background

In an earlier phase of the County's history, the representation of accused indigents in Allegheny County was provided by private attorneys who individually contracted with the County while maintaining their private practices. This arrangement influenced the OPD's development, as evidenced by part time deputy public defender attorneys who still maintain a private practice. Even after attorneys began working out of a common facility for their public defense work, they continued to maintain private practices.

Once the OPD was established more formally, full time attorneys were hired to supplement the contract attorneys who had declined to convert to full-time employment. Along the way, the attorneys were unionized and the agency was sued and then administered under a consent decree for some years. As a backdrop to the most recent history, a criminal justice policy group of all agencies, including the OPD director, began meeting in 2002 to consider system-wide concerns.

In 1996, the ACLU's suit against Allegheny County in the U.S. District Court alleged severe understaffing, excessive caseloads, faulty processes, incomplete records, ineffective procedures, and inferior physical facilities. It was claimed that all these factors contributed to systemic violations of the Sixth Amendment Constitutional right to counsel and principles of indigent defense by competent representation.

The case was eventually mediated and resulted in a 1998 settlement and consent decree. The resolution established a minimum ratio of two public defenders to every prosecutor and included other procedural stipulations that significantly increased the size of the agency's staff and improved the sophistication of its operations. (See Appendix D for a history and summary of this litigation.)

Monitoring for compliance continued until the end of 2004, when challenges to the OPD's handling of capital cases, staffing, and consistency, as well as preparedness, were heard again by the court in a motion for contempt. While staffing levels and capital case representation were deemed acceptable on review, various problems with inadequate client communication were highlighted and procedures were recommended to address these chronic problems. Revised procedures addressing these issues were adopted by the OPD.

Current Issues

Concerns have been raised about the OPD by judges, outsiders, and those within the court system, in complaints that usually seem anecdotal but which have recently raised the interest of the County Solicitor. These concerns target the following general areas:

- the significant number of cases which have been transferred to outside counsel (often cases involving conflicting co-defendants) because of either alleged excessive caseloads or administrative problems in managing the workload and personnel within OPD;
- the apparently excessive number of continuances or postponements granted by the Judges of the Court of Common Pleas, leading to a "culture of delay" and a virtual co-dependency throughout the court house culture on this seemingly normative delay pattern, which is often blamed on the OPD;
- the alleged absence of accountability in the management structure and supervision of the OPD office; and
- a lack of procedures and policies within the OPD to assure adequate case preparation, complete and available files, timely performance and sufficient and timely consultation with clients.

Because all of these concerns have arisen within the historical context of a major lawsuit against the OPD and Allegheny County, and because the overall justice system has been making good progress at re-engineering, and mostly because of a concern about possible efforts to re-litigate some of the same issues that were raised in earlier lawsuits, the County Solicitor engaged ILPP to conduct this privileged and confidential review and to provide legal advice to the County.

Findings

a. Organizational Diagnosis

The "Seven-Box Model", originally developed by Dr. Melvin Weisbord of the Wharton School and expanded upon by Joan Liberman of the National Academy of Corrections, is an effective method of understanding the organizational health of an agency such as the OPD (see Appendix A).

This method involves seven steps that analyze organizational processes and help spot problematic areas in an organization, test the strengths of the organization, and prepare for change within the organization. Once an organizational diagnosis is developed, an assessment can provide the opportunity for an organization to be more proactive rather than reactive to key issues.

The seven interrelated processes that this model covers include an analysis of the organization's purpose, strategies, structure, rewards, helpful mechanisms, relationships, and leadership. The outline below summarizes the input of the OPD management team and representative staff from the organizational diagnosis workshop held as part of this study.

1. Purpose

- a. The purpose of the OPD is to effectively represent indigent defendants, but there is no clear indoctrination of attorneys or staff in the Office's objectives and mission statement.
- b. The Office's rules of professional ethics and documents that elaborate on the mission statement are not used or applied regularly.
- c. The practice standards that were put in place after the ACLU lawsuit are not regularly used in OPD Practice.
- d. The efficiency of employees' training in the OPD's work standards is questionable.
- e. Other than the two full time lawyers who do the training, the OPD has no official training coordinator.

Based on the workshop and further study, ILPP finds no clear outline of the OPD's purpose, nor any real leadership or direction with regard to defining that purpose.

2. Strategies

- a. Defenders do not meet their clients after they are booked into the jail.
- b. The OPD has not established a plan for managing or transferring caseloads when case numbers increase and exhaust the allocated funding.

- c. Crucial mechanisms for identifying conflicts and scheduling issues are lacking.
- d. There are no procedures for maximizing the usefulness of expensive attorney staffing.

Based on the workshop and further study, ILPP finds that the strategies of the OPD are flawed by unsystematic assignments of attorneys to courts and by the lack of norms concerning baseline practice management or expectations.

3. Structure

- a. Inefficient communication leads to obtaining varying directions from different agency sources rather than from a single source.
- b. There is no supervision for the support staff as a whole, and each group is treated differently, which limits efficiency and teamwork.
- c. There is no current and recognized OPD organizational chart.
- d. Though there is an attorney who manages the Juvenile division, this role is missing from the Adult flow of cases. There is no one officially managing and coordinating the Adult caseload.
- e. The rotating "pod lawyers" who work in the jail do not have meetings among themselves to coordinate the work and manage case or client flow.
- f. There are no organized public relations or communication strategies for the OPD, other than law school visits and publications.
- g. In regards to the process of client representation, from the initial interview with the attorney through trial and disposition, there is an unacceptable period of approximately four months, between the pretrial conference and the preliminary hearing of a case, when jailed offenders do not see their lawyer.
 - i. During this dead time, there is no proactive problem solving in the OPD.
 - ii. During this dead time, there is no attorney assigned. Jail mail is a problem that results from this gap in representation. Complaints to the disciplinary board and the client's long wait without an attorney are major problems labeled by some deputy public defenders as the "OPD's hidden shame".
- h. There is no audit or inspection of the OPD.
- i. There is no one responsible for managing OPD cases and files.
- j. Monitoring attorney hours is a problem because each division has different sources of delays, lunch hours, norms for accounting, and even work hours.

From the workshop and further study, ILPP concludes that the structure of the OPD is not well adapted to efficiency because it is not maximizing or even managing the use of scarce personnel resources. The lack of hierarchy, meetings,

team building, and managed and supervised teams further weakens the structure of the OPD.

4. Rewards

- a. There is no legitimate free time and there are no granted days off for attorneys in the various divisions, particularly in the Juvenile and Pretrial units.
- b. There is no rewards system for the work that the defenders do.
- c. Feedback and evaluations do not lead to any effective change in the OPD operation.

From the workshop and further study, ILPP finds that the OPD is missing a rewards system in terms of salary, grades, and support systems. Furthermore, the lack of management and supervision might actually provide disincentives to timely completion of required work.

5. Helpful mechanisms and technologies

- a. In general, information files in the OPD are not easily located and thus difficult to obtain. Furthermore, while there is verbal interaction between the attorneys and inmates in a jail pod, there is no paperwork from Intake about an offer to a client or an opportunity to see a lawyer. This information is consequently "lost to the file" and does not reach the attorney in a timely manner. Slippage in cases is also caused when questions relative to a case fail to come through, and even if they do, the required information is not on file.
- b. At one point, as a result of the ACLU lawsuit, attorneys handed brochures and forms to their clients, which facilitated some attorney-client interaction. These items are currently absent.
- c. The lack of file management procedures, adequate mechanized file cabinets, and other similar organizational technologies make it difficult to locate information and consequently easy for mistakes to be made and left unnoticed on Intake documentation.
- d. Jail mail from inmates is not connected to their files.
- e. There is no database that alerts anyone to problems that arise in coordinating and assigning cases to lawyers.
- f. There is inadequate or no space available for attorneys, records, witnesses, meetings, etc.
- g. No accounts manager or records person exists to deal with the problems of files, space, and related caseload management problems.
- h. Some but not all Defenders have been given cell phones, which affects morale and scheduling.

- i. The office has no laptops and no wireless ability to build a file from any location, which contributes to the lost files problem and greatly limits efficiency.

From the workshop and further study, ILPP finds that the resources available for OPD's functions are highly limited. The problems range from inadequate space to deficient technologies and filing systems.

6. Relationships

- a. There is a lack of bilateral communication between supervisors, staff members, and lawyers, particularly around working out problem areas or addressing complaints.
- b. Evaluation techniques are ineffective in improving OPD morale.
- c. There is no team-building in the OPD.

From the workshop and further study, ILPP finds that relationships are cordial and supportive in the OPD Office, but the director and managers undermine discipline and productivity through conflict avoidance and a lack of training.

7. Leadership

- a. Although OPD has a Director, there is no person who attends to or keeps the various noted organizational functions running or in balance. Additionally, there is no Deputy Director.
- b. Leadership does not directly deal with conflicts, and there are no mechanisms other than the County's Human Resources department and the Employee Assistance Program to help facilitate resolution of staff/relationship problems.

From the workshop and further study, ILPP finds that there is no one in the OPD who provides the type of leadership needed to maintain the vigor and balance of the organization's mission, strategies, structure, incentives, helpful mechanisms, and relationships.

b. Overall Agency Issues

The Office of Public Defender lacks mechanisms to ensure accountability. The culture of independent contractors that originated in the formation of the OPD over twenty years ago continues to be a dominant theme in the office's culture, staffing patterns, procedures, and in its current problems.

It is common for OPD attorneys to "pick up their files" once a week and manage their own calendars with hardly any interaction with their colleagues or offers of real administration to support their accountability to an organizational structure for their

time or management of their cases. In short, many of the deputy public defenders tend to act as independent contractors, and their actions are not truly governed by management or supervision. (It is also alleged but unproven that many of these attorneys do not in fact keep regular hours, do not work as long as their conditions of employment require, and are often home, away, or working in their private practice.)

Some of the problems addressed in the ACLU lawsuit included an underfunded and understaffed office, antiquated policies and procedures, alleged overwhelming caseloads, and a consensus that physical facilities are inadequate. Many of these problems persist today, contributing to a dysfunctional office culture where normative or even minimal performance expectations do not exist.

The physical facilities were and still are undersized and overcrowded. The norm is two attorneys to a small room, which is certainly not suitable for client conferences or genuinely intense advocacy work. The space is old, poorly maintained, and too small for client or witness interviews, staff meetings, etc. Such quarters reinforce the tendency of the attorneys to spend work time away from the courts and OPD offices, or in the courtroom. The lack of space may, and most believe does, additionally reduce interaction with clients and witnesses.

Although the size of the staff has almost doubled since the inception of the ACLU lawsuit and criminal case filings have remained fairly constant over the last decade, caseloads are once again perceived as "excessive" by the OPD and some commentators within the larger system. This perception is chiefly results from the sheer number of appearances for each case. Attorneys can reasonably claim that there are larger and perhaps increasing calendar (and by some definitions, workload) demands on their time.

However, it may be that the actual work required by the caseload is not greater than it was in the past. ILPP believes that this is in fact the case. The problem is within the system, the participants' work and practice habits, and the dysfunctional management of the overall court system (which is improving) and OPD (which is getting worse).

When five assistants left the office last winter in fairly quick succession, the OPD responded by sending over 100 cases to "conflict counsel," where they were in turn sent on to outside contract counsel. The large numbers and high costs involved served to increase the negative perceptions and criticisms of the agency's work. It also raised questions that indirectly led to this study, and rightly so, as the objective basis for an overload requiring such extreme action has not yet been identified.

Good caseload data was not readily available, but as will be discussed later, workloads may in fact be high (and perhaps higher) because of the increased time necessary to process each case. This is due to multiple continuances for each case and terribly

inefficient case scheduling, case management, and case processing by a court system that remains static compared to national best practice in court case management.

OPD administration, policies and procedures, and supporting systems remain inadequate, including those affecting case preparation, continuances, consolidation of cases, salaries, and promotions.

c. Continuances

Although both standards (external and internal) and objective and accurate system data are lacking, there is little doubt that continuances in the Court of Common Pleas are seen by all as excessive. Even a cursory review of the available data on courtroom visits suggests that repeatedly postponed cases are the rule rather than the exception. Quantifying and attributing continuances to the various participants is more difficult. There is no single source of good, well-defined information about continuances.

Judges suggest that it is routine for seven or eight continuances to be sought (and granted by the courts) before a case finally gets resolved. In fact, Rule 300.12-13 of the Allegheny County Criminal Rules of Court, which is more often honored in the breach than followed, requires the assigned judge to allow a change in the trial schedule only upon a showing of "good cause". This problem of constant postponements of cases alone is a major factor in driving up the number of appearances and the perception of higher workloads for prosecutors, judges, and public defenders in the Court of Common Pleas, despite a striking long-term stability in the number of criminal cases filed. It should also be noted that the constant postponements drive up the perceived workload of bailiffs, court reporters, police witnesses, and many, many others at an overall expense beyond the imagination of most observers. While outside this study's scope, it must be observed that this set of problems contains the solution to many of the County's major budget problems.

A high continuance rate greatly debilitates the court and carries enormous hidden costs. Every person connected to the courtroom must expend some increment of time in preparing, handling, or, at the very least, waiting for and "touching" material for a case; this time and some effort is lost when the case is continued. This terrible waste occurs each time there is a delay in a case's movement towards disposition.

What is missing on a system-wide level is the norm that every time a case comes before the bar, something should happen in order to move the case forward toward disposition.

In a large majority of cases, in any system, a disposition can be readily achieved if adequate preparation and case management are in place. After all, more than 95% of all cases achieve disposition through a plea bargain. If the testifying officer is ready, other

witnesses have been subpoenaed, the prosecutor is ready, the defense has talked to the client and has received discovery and appropriate sentencing program options, and all relevant options for case disposition have been explored, then disposition is only a matter of coming before the bar.

There is a widespread perception, not entirely supported by the data and other facts, that the high continuance rate is primarily driven by the defense. Judges interviewed almost uniformly held that public defenders had not interviewed their clients before appearing in court, that continuances were almost never requested via formal legal motions as required by court rules, that unnecessary continuances were sought when routine matters could have been handled by a colleague or by someone regularly assigned to a particular calendar (as all cases are handled vertically), and that it was common for unprepared defense counsel to nevertheless go forward.

However, a review of several months' worth of continuances suggests that the delay is not entirely driven by the defense. Based on OPD's Trial Postponement data for the months spanning March to May 2008 (set out in full in Appendix B of this report), Figure 1(a) shows that:

- About 25% of continuances were sought by the prosecution: a witness was missing, forensic tests had not been completed, or a necessary police officer or victim did not or could not appear. It is unclear from the data whether witnesses were properly subpoenaed and failed to appear, or subpoenas were not sent at all. Thus these failures to appear may indicate that something could be amiss in the agency issuing subpoenas (which ILPP confirmed is sometimes the case).
- Roughly another 25% were continued for programmatic reasons: the defendant was being considered for drug court or another specialized program. In 16% of the cases, the defense was not prepared: a witness had not been subpoenaed, discovery had just been received, a conflict in representation had been discovered, or the assistant public defender was not available.
- An additional 14% were defendant related: this is usually because the defendant was in some other county's jail facility, was late, or requested a postponement for other reasons.
- An additional 10% were due to the need to consolidate cases or work out a conflict in co-defendant representation, something that normally can be worked out ahead of time by an alertly administered public defender's office. The remaining 10% or so were continued by the judge, usually because the defendant had not been transported to court or due to a judge's schedule or absence from court.

Figure 1(b) shows that the largest single category of continuances is system-related. The defendant was being considered for a treatment program, was in some other facility (jail or court), or had not been transported to the courtroom where the case was due to

be heard. The second largest group, comprising about a third of all continuances, is related to inadequate preparation by the defense: cases had not been consolidated or conflicts had not been resolved, witnesses were not subpoenaed by the subpoena office, or the assigned public defender was not available.

To put this in perspective, this figure is only somewhat higher than that of prosecution-related delays, which represent about a quarter of the total. The difference is that the defense-related delays are primarily related to inadequate processes.

The OPD's Trial Postponement data were corroborated by an unscientific review of one day's continuances of cases before several judges by ILPP, suggesting that the data was reasonably accurate.

Figure 2 shows the reasons for continuances at the trial level in the Criminal Division in 2007 ranked according to frequency. According to the report created from the Common Pleas Case Management System (CPCMS) (also presented in Appendix B of this report), the leading three reasons were that the Defendant (48.22%), Defense Attorney (36.18%), or Prosecution (4.75%) were "not ready".

A continuance report created from CPCMS consistently shows 8-12% prosecution-driven continuances, 10% court-driven continuances, and 35-50% defense-driven continuances. However, these attributions of delay to the defense include cases in which the defendant is not able to proceed through no fault of his own, such as when he is locked up in another facility or when a program has not yet processed him.

Another set of data set out in Appendix B and also created from CPCMS breaks down the continuances in April 2008 for each judge (Figure 3). Out of 1,040 counts of continuances, approximately 50% were granted by judges "0113", "0102", "0103", and "0114." For judge 0113 and judge 0102, the continuances were mostly defense-driven (94.25% and 92.75% respectively); i.e., the defendant needed more time. For judge 0103, 68.60% of the continuances were attributed to the defense counsel not being ready, and 22.31% to the defendant not being ready. For judge 0114, 98.31% of the continuances were driven by the defense counsel not being ready.

These last two sets of data show that 32% of postponements are court-related, 5% attributed to the prosecutor and the remainder to defense. They also indicate inconsistencies among judges, which argue strongly for an improved court case management system, best implemented after some sort of overall system assessment.

In short, after looking at all the available data, it can be concluded that the quality of the data is not good, definitions are inconsistent, and use of the CPCMS data in particular is weighted against the defendant by including system delays in the defendant's column. We believe that a careful attribution of the data would demonstrate that delays are

endemic and approximately spread equally among court, system delays, the prosecution and the defense. The important point is that the *number* of delays is excessive, regardless of the reason.

While a better system to provide more comprehensive and consistent data is necessary to consistently and objectively demonstrate the primary reasons for continuances, these various sets of data all point to a conclusion that the Court of Common Pleas is heavily burdened by excessive grants of continuances, and that the defense is perceived to be, and may well be, the major generator of that delay.

The present system has inadequate procedures for early identification of cases for consolidation or conflict resolution, for handling routine matters on a calendar basis by a single assistant, for providing coverage of cases when an Assistant Public Defender is not available or could not be available, and for assuring that discovery and witness subpoenas are complete.

In assessing this problem, it is important to note two important dynamics:

- 1) only a judge can grant a continuance, and
- 2) defense attorneys sometimes come to believe that all continuances work to the advantage of their clients because the witnesses may not show up, memories may fade, and the prosecution or court may, over time, make an error.

A large number of defendants *appear* to be receiving sentences for "credit for time served," which suggests that they have served more time than they would have served had they simply been sentenced at an earlier point in time.

Delay does not serve the interest of a defendant who is in custody and simply needs to get sentenced. This situation applies to the overwhelming number of defendants, 98% of whom plead guilty.

Excessive delay means that the defendants end up serving more time, court calendars are clogged, public defender and prosecutor workloads are higher than necessary and/or become inflated, and the system overall lacks accountability in terms of the relationship between resources and workload.

A culture of co-dependency has evolved between the courts and OPD in which rules requiring good cause for continuances are not enforced, and judicial apprehension of appeals leads to disingenuous laxity in granting continuances.

Public defenders put off and do not examine the causes for continuance while courts feel compelled to grant continuances to "make the system work" (although homicide and sexual assault cases appear to be the exceptions.)

Courts make only individual and sporadic efforts to manage their calendars. As a consequence, in spite of much lip service given to the belief that individual judges must and do control their case calendars, most judges have in fact given up functional authority over continuances sought by the defense. With that, the judges have no control over their docket, despite the long-standing myth to the contrary, namely that they control the docket.

What is worse is that the defense tends to focus primarily on the priorities of the defense attorneys to the point where they have become more concerned in a great many instances with their own personal calendars than with the best interests of the defendant.

Allegheny County has, by tradition, no real court case management system (CMS) in place, whether manual or automated. This lack in the system overshadows all other problems of delay and feeds various dysfunctional patterns of case flow. The obsolete court docket system currently in place, along with the lack of rules and norms to move cases, creates congestion and delay, costing many millions in lost chances throughout the flow of most cases.

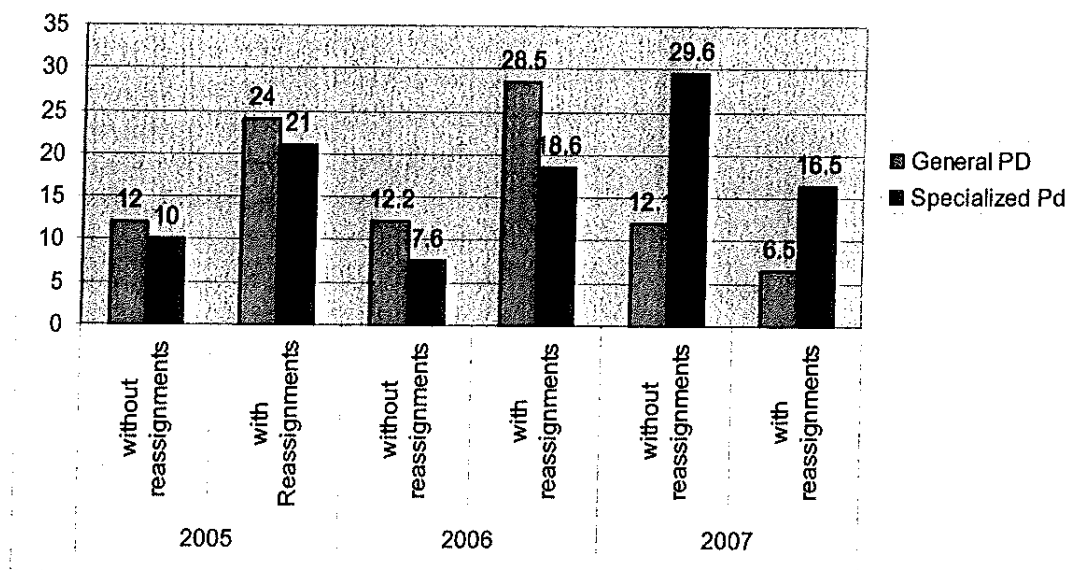
The lack of a court case management system means that courts have no standards, no goals for managing cases, no performance benchmarks, and only minimal information or feedback to individual judges about their performance in comparison with other judges handling similar cases.

The result is a system imbued with a culture of delay and lack of accountability that goes far beyond the problems of the OPD.

d. Reassignments

The following comparison chart was constructed from data supplied by the OPD, which shows the number of assignments and reassignments for all Public Defenders employed by the Office. Reassignments are cases that are added into a PD's docket of cases later than usual, typically after the pre-arraignment stage. There can be a variety of reasons, from the resignation of the PD to the transfer of a defendant from private to PD representation.

Comparison Chart: Active PD per Month



There are, however, some gaps in the data. Some specialized assignments, such as the drug, Act 33, and DUI cases, are not included in the numbers. While these represent a relatively small proportion of all actual cases, the specialized cases are approximately 5% higher than represented by the data.

The numbers of assigned cases are shown in the chart. The numbers of both general and specialized cases have increased from 2005. Also shown is the difference between specialty and general cases assignment numbers. This difference is due to the nature of the cases. The specialty cases are typically more involved, and take considerably more time than general cases. The numbers increase by at least 50% when reassignment cases are added. Moreover, the specialized cases increase by an average of 60% when the reassignments are added.

It is difficult to tell what these increases mean. It is not fair to automatically assume significant inefficiencies. The numbers of reassignments per PD have been relatively static; however, the overall numbers have increased from 464 (2005), to 509 in 2006, to 1325 in 2007. Because there is no reassignment data available yet for 2008, it is difficult to ascertain if the 2007 numbers are telling of a problem or just represent a fluke year with significant turnover in staff and cases.

From 2005 through 2007, the total number of cases handled by the PD office has fluctuated somewhat. In 2005, the PD had 9,103 new cases assigned. That number jumped to 10,050 in 2006. In 2007 the number of cases receded to 9,340. Over that period, however, there has been a consistent increase in the number of cases assigned per month to each public defender. The numbers for non-specialty PDs were 24.9 in 2005, 28.5 in 2006, and 29.6 in 2008.

Basic analysis is limited due to the lack of sufficient data points, and it leaves out the huge impact of postponements and appearances which differ from the traditional kind of workload of trial preparation. The specialized cases emphasized in the analysis are in an area of practice that is not measured, monitored, managed or much understood and requires strong management analysis and real oversight and control. The increases may not represent higher workload. In fact, a lighter workload may be masked by more paper, appearances that are pro forma reviews, check-ins, etc. The data is too rough and limited in scope, without standards or bases for comparison to generate a conclusion. However, it is included herein as a basis for urging further study and management analysis to understand their real workload impact.

e. Client Contact, Case Consolidation, and Conflicts

Judges in Allegheny County, including those interviewed directly and those whose informal opinions were eventually shared indirectly with the study team, have a general "consensus" or shared view that public defenders are not meeting with their clients prior to some key appearances in court. This observation is often based on what clients say in the courtroom (and the very small sample of clients interviewed for this study) as well as the coded reasons for typical requests for a continuance.

This perception is an oversimplification. In fact, the OPD has a system for interviews by paralegals and investigators that happen very soon after arrest. Most files indicate significant work done on the case before a public defender reviews it and appears in court. A small number of random interviews conducted for this study with in-custody defendants suggests that there is not widespread dissatisfaction with public defender representation, beyond what is typically found among most defendants. Most inmate interviews suggested that the public defenders were well-prepared and generally helpful, although one interviewee reported that the public defender did not have paperwork and was unaware of the charges. Some stated that the public defender at the preliminary hearing was different than the individual with whom they had initial contact, but these persons reported no discontent with the change once they found the "new" public defender capable of proceeding.

The system, and particularly the way that indigent persons are provided representation, however, is inadequate and poorly managed. In many routine cases, there is little or no contact with a person the defendant can regard as "my lawyer" until just before or at the first courtroom appearance.

There is nearly a total lack of representation for about four months between the first stages and the trial. During this time inmates are languishing with literally no attorney of record, no one to update their files, and no real advocacy.

This waste of opportunities to move cases and the loss in justice and monies are hard to justify. They are institutionalized and integrated into the courthouse culture, and the cost is enormous. Due to the culture of delay, defense attorneys come to accept that a case will be continued multiple times before "real" decisions are made. Thus the defense attorneys feel, and justify to themselves, that there is no urgent reason to be fully prepared early in a case.

The highly individualistic assignment and handling of cases contributes to OPD's systemic inadequacy at identifying and resolving situations where a defendant has multiple cases pending that should be consolidated for plea and sentencing purposes. In over 10% of the cases, actual courtroom appearances must be made, sometimes multiple times, to identify the various public defenders assigned and to get consolidated representation worked out. This is all work that should be taken care of by the OPD management, in advance, and not at the expense of appearances and court time.

In fairness to the OPD, however, it lacks the kind of manual or automated court case management system (CMS) that most modern jurisdictions now have, which results in greatly accelerated resolution of these issues.

A similar situation exists with regard to conflict of representation between co-defendants with a possible conflict of interest. The OPD lacks adequate policy and training on what constitutes a conflict, as well as an appropriate process for early identification and reassignment to conflict counsel. There is disagreement within the OPD about what constitutes a conflict in a variety of specific situations. Too many cases have to go to court first just to be continued to deal with the conflict issue – something that should be systematically identified much earlier.

Nearly all cases go before the criminal court, including cases that are appropriate for the Magistrate Court level. The Early or Accelerated Disposition court is not yet as effectively situated within the process as it could be, and developing eligibility requirements may be too restrictive. This set of constraints results in an unnecessary number of cases involving lesser offenses being sent to trial.

Establishing a pretrial calendar in a specific court each day, with a judge to oversee the process, would go a long way to easing this problem. Proper judicial oversight will mean that trial dates will not be set until the case is truly ready to go to trial, with all discovery produced, witnesses interviewed, and attorney-client meetings completed.

The OPD and the DA should assign calendar attorneys to manage case flow.

f. Quality of Representation

In light of all these systemic problems, it was expected that most would claim or perceive that there was a significant breakdown in the quality of the representation of individual defendants in the Court of Common Pleas.

Surprisingly, or perhaps because all are involved in the system of co-dependent delay, there was no such basic judgment of a breakdown in representation. The strongest criticisms tend to be that the OPD lawyers do not sufficiently use investigators, do not interview their clients, do not file motions in advance, etc. Nonetheless, the small sample of clients interviewed did not seem to be inordinately displeased with their attorneys and the judges seem generally pleased with the quality of the individual public defenders assigned to their courtrooms. Still, in the opinion of the ILPP Study Team, this sanguine perspective is a result of a lack of information on court performance and the cultural and contextual involvement of the entire "court house gang." In other words, dysfunctional family life is rarely observed by individual family members, who are so entrenched in the process that they cannot really see it for what it is.

While it is difficult to come to objective judgments or conclusions supported by data, probably as a result of the culture of co-dependency described above and the lack of objective consistent data, motion practice has clearly deteriorated to the point where written motions are almost never made in advance for continuances, discovery, or evidentiary issues.

g. Training

There is a widespread perception among judges that there is little or no training of assistant public defenders. Again, this general perception is oversimplified; in fact, a contingent goes to training at the Pennsylvania Association of Public Defenders each year.

Despite this effort, almost all agree that the amount of training is inadequate, and that the lack of training reinforces the extreme individualism practiced in the office. Training is needed in such basics as ethics, conflicts of interest, motion and trial practice, and certainly in performance standards.

A separate issue is training of supervisors and managers. No such training currently exists and observations unambiguously demonstrate that there is a great need. A public defender is appointed from the ranks. He has received no training and confronts the problem faced by all elevated from among peers, namely, establishing himself as the authority among those once his equals. His management skills are clearly lacking, which is evident from almost every aspect of the OPD operation reviewed for this study, including a lack of actual knowledge of what is going on in the office and

courtrooms, and a lack of effort to identify and remedy the most serious and obvious OPD and system problems.

His managers and supervisors likewise seem to have had no specific management or supervisory training. Their work in supervising and managing the office's workload clearly demonstrates their inadequacies as managers and supervisors. These deficiencies further reinforce the individualistic, unaccountable culture of the OPD office.

h. Information Technology

The OPD has received short shrift from the County in the development of information management systems, technologies, and programs. For years after the introduction of computers, the OPD received only leftover desktop computers discarded by other county offices, resulting in a hodgepodge of machines with no common IT architecture. That they have sufficed and lasted as long as they have is a testament to the "shade tree" technical skills of the office's IT support staff. Recently, 25 new desktop machines were delivered, which is an improvement over the prior situation but hardly meaningful in the face of the great need for management data. Additionally, the general availability of good programs and inexpensive hardware is also missing from the OPD budget.

The lack of adequate hardware and software to manage the work is in part a direct result of the fact that there has been no focused effort to identify the appropriate IT structure for the OPD. Accommodations have not been made that address the need for public defenders to work from the courtroom, the jail, the office, witness premises, and their private-practice office and/or home.

In light of this context, an improved IT architecture would involve small laptop computers with wireless connections in most of those locations, backed by data servers in the office and a suitably secure IP tunnel to access them.

Providing all public defenders with cell phones would also greatly help modernize the currently primitive communications process, again at a very favorable cost-benefit ratio compared to adding staff. There is a distinct need to elevate the "stepsister" status of OPD IT functions and to recognize that case management and scheduling data alone can solve many more problems well, and inexpensively compared to simply adding staff and to the cost of talent that is currently wasted by inefficient administration, management, and supervision unsupported by technology.

A good time for this to occur would be in connection with the acquisition of a public defender's case or records management system (CMS/RMS), which is now being effectuated in Allegheny County. A good system would improve the tools available to

finally bring some management to the office, and therefore careful thought and planning should be given to which system is appropriate. The choice needs to be compatible with the vaunted Pennsylvania JNET justice information systems and work with the yet-to-be-adopted court CMS. It should recognize that the needs of Pittsburgh and Philadelphia are qualitatively different from the other Pennsylvania counties with much smaller urban jurisdictions. Pittsburgh and Philadelphia have more in common with large cities in other states than with their more rural Pennsylvania cousins.

One area of improvement has been the delivery of discovery materials from the prosecution on CDs. Because this "innovation" has been recently implemented, there is a sense of relief at its arrival. But the CDs (which are vulnerable to loss, can only be in one place at a time, and still need to be hand carried) should be replaced with electronic transfer of the discovery files via secure FTP or email. Then a system should be developed for integration of discovery documents into an appropriate CMS for the OPD office.

The OPD needs a decent brief bank that would promote collaboration among assistants rather than the individualistic culture that now dominates. This development would greatly help improve the OPD's motion practice.

Finally, the OPD needs to be reconnected to the Allegheny County justice information system. Because of expressed concerns about security and misuse of law enforcement information by part-time attorneys and those who also have private practices, the office has been deprived of non-privileged information readily available to the prosecution and courts. That deprivation should be immediately corrected, as should the perception that system misuse has resulted from external forces. It results from maintaining private practices, which, while complicated and not a major focus of this study, also should end.

i. Office Administration

Office salaries are too low, but given the availability of a steady supply of young attorneys, recruitment has apparently not suffered. However, the OPD personnel structure has insufficient gradation to retain attorneys as they become more senior, leading to a high turnover rate among more experienced attorneys—another truly major but largely hidden expense because these experienced lawyers are replaced by less expensive juniors.

The 2008 Attorney Records (see Appendix B Figure 6) has a Case Assignment Tracking Log for the Trial Unit attorneys in the OPD. Six out of 43 attorneys have already resigned and the data only goes up to May 2008, while four more attorneys have been hired. Based on the 2007 Attorney Records (see Appendix B Figure 7), the six were considered experienced attorneys as they had 2.5% to 3.5% of the 9,411 cases split

amongst all the attorneys. Other attorneys had caseloads ranging from 0.03% to 4.2%, so they were in the upper half of the spectrum.

Attorneys who resigned in 2008	Percent of caseloads in 2007
Public Defender 1	2.66%
Public Defender 2	3.36%
Public Defender 3	2.75%
Public Defender 4	3.52%
Public Defender 5	3.55%
Public Defender 6	2.92%

There will always be the tendency in government offices to have young attorneys come in, get trial experience, and move on to more lucrative private practices. But the OPD needs to have multiple levels of assistant public defenders (Assistant PD levels 1, 2, 3 and 4, for example) with increasing salaries and defined benefits at each level, and a way of examining for promotion from one level to the next. This approach, which is the norm as well as best practice elsewhere, will reduce turnover and improve the value obtained from personnel salaries currently expended.

Some serious thought should be given to how the OPD's physical facilities could be improved or relocated, particularly with regard to offering space for client and witness interviews. The space issue needs a holistic plan for immediate improvement as well as a long-term solution to productive housing for the agency's work. Again, the space solution is inexpensive compared to hiring staff to compensate for the inefficiencies.

Leadership of the office needs to be improved. The OPD Director has not been trained in how to manage a large public defense office, and is not a natural manager. More importantly, he appears virtually disinterested in administration and management, and as a result, holds infrequent meetings, does not assign or oversee supervisors to help manage, and fails almost completely to even try to identify and to address the major system problems that plague his office. These terribly serious problems are in contrast to his very personable ways and his wide range of contacts, which in fact do help the office in many ways.

The First Assistant Public Defender does not have the level of respect needed with the bench and others to take up any of the slack that results from weak leadership at the top. Significantly, this is due to a role that requires producing what judges request, promised to the judges by the OPD Director, but not always possible or available for to produce.

Many of the misperceptions or exaggerated perceptions that the OPD suffers from in the court community are due to a lack of effective communication by the top two managers in the OPD, the Director and the First Assistant.

While communication alone will not solve the incumbents' lack of managerial skill or inability to lead effectively, it would represent a starting point in focusing on the many related problems, and the beginning of solutions. Without aware and committed managers and leaders at the top, the OPD problems are too long-standing and too deeply embedded in the court culture for any infusion of new resources to make a significant difference.

Deficiencies in administration and management are greatly responsible for the lack of attention to the most serious and obvious problems.

j. Budget

OPD budgeting should be focused on resolving the serious system and representation problems identified in this report. Without resolving those problems, no amount of funds for new attorneys will make much difference. These reforms are not necessarily dependent on increased staff, but do require information technology training and greatly enhanced administration and management.

Figure 4 (see Appendix B) shows the OPD's case management and capital budget requests. The top section summarizes the budget request submitted by the OPD office and the budget actually adopted. The difference between salaries requested and salaries adopted was \$249,725.

The bottom section provides the detail of the salary line difference of the \$249,725 by comparing base salaries, union increases, non-union increases, and new positions requested. The difference in base salaries is roughly due to two individuals on family or military leave. The remaining difference is due to positions requested versus positions approved. There were no requests for new attorney or management positions. Most of the new position requests were clerical in nature, contradicting Figure 5, the budget narrative (see Appendix B) that was prepared by OPD, which includes a proposed increase of 6-8 additional lawyers, and an increase in the number of managers to improve the quality of lawyers and support staff.

The current director of OPD was unable to assemble a budget request or strategy that matched the many system and management problems the organization faced. Figure 5, presented on request to the study team, was vague, unsupported by any data other than a dubious reference to non-existent "hard data," and without any focus on the major well known problems of the OPD's work environment. It also stated that there was no formal process to make budget requests; this statement is wrong. There is in fact a

formal process, as reported by the County Manager and observed by ILPP. (The County Manager detailed the process from the initial submission of departmental requests to the final step of sending it to the County Council for approval.)

For some parties to be able to describe in detail the budget request process and others to be unaware of it shows a lack of communication. Measures should be taken so that all individuals above the line level in the OPD are aware of the budget request process.

k. Practice Standards

The OPD's practice standards provide guidelines to ensure effective legal services. While their concept is ideal, the standards are neither updated nor consulted beyond initial training, which renders them useless since they should be employed by managers and supervisors along with file checks and other means, to ensure that jobs are being done correctly. In normal professional practice, these standards are not to be read once by new attorneys during orientation and then put aside thereafter, as in fact they are in OPD's approach. The OPD Director and other interviews show that the practice standards are not employed beyond initial orientation, nor are they enforced by supervisors and managers over time, thereby demonstrating a lack of the most basic management oversight.

The employment of the practice standards written as part of the ACLU settlement agreement referred to earlier and summarized in Appendix D was a measure taken by the OPD to minimize concerns which would diminish the quality of legal representation received by clients (i.e. lack of communication, preparation, conflict of interest, and case overload per attorney), and would greatly reduce the number of continuances if actually adhered to. The practice standards outline the requirements and responsibilities for criminal defense practice so an OPD attorney can use them as a resource to effectively and appropriately handle each case. They would be greatly beneficial if attorneys were held to use them beyond their initial training.

The practice standards begin with guidelines for general practice. Each of the following chapters outlines the stages of various types of representation: representation of the adult client, adults in death penalty cases, juvenile clients, probation and parole matters, and in civil commitment proceedings. Each type of representation has guidelines that walk the reader through the stages of the process: initial procedures, investigation and discovery, pretrial motions, negotiation and plea agreements, trial, sentencing (or disposition) and post sentence procedures. Before going into pretrial proceedings for representation of adults in death penalty cases, the practice standards take into account the roles of the D.A. in death penalty cases; the number of attorneys per case and their separate duties; the education and experience of the D.A.; and issues in the selection, monitoring and removal of a D.A. from cases. Essentially, more information is given here than in any other type of representation.

These guidelines do not tell the attorneys specifically what to do. They are more of an outline of what they should do—their duties and obligations—such as acting professionally, maintaining good communications, being prepared, and so on. They represent common sense written in legal jargon. They concisely summarize what the attorney should do if such and such event should occur, and briefly review what rules and practices the attorney should be familiar with to be ready to tackle various issues.

There is mention of a trial notebook on the side of the practice standards received. It appears to be a good practice, but it also appears to be the only physical action taken in terms of using the guideline as a primary resource. The OPD practice standards should be updated continually with new information, and there should be a monitor or monitoring procedure in place to make sure attorneys are adhering and referring to these guidelines beyond initial training. In addition to the benefit of complying with the previous lawsuit, these standards should be regarded by attorneys as a usable resource to assure quality and effective legal services.

The Pro Bono Panel appointed to review the OPD's compliance with the previous ACLU lawsuit (see Appendix D) put forth three key recommendations: (1) to create an intake questionnaire, (2) to adopt a letter to clients regarding the purpose of the preliminary hearing, and (3) to have all PDs to sign these documents to ensure accountability. However, according to OPD Director, the use of signed letters and the practice of signing all documents have largely been ignored. As part of the previous lawsuit, the Panel's recommendations should not only be seen as useful, but required.

Necessary recordkeeping designed to track public defender contacts with in-custody clients has also been largely ignored. The jail itself shares some culpability here in the system-wide breakdown, as employees at the County Jail have not required public defenders to adhere to this standard procedure. Interviews with correctional officers, along with further inquiries and observations of attorney visits by ILPP, revealed that the procedure for attorneys visiting clients is for the attorneys to sign in the visiting log book with their name, employer, inmate's name, and the purpose of the visit. The attorney should then give his or her bar card to the correctional officer and state whom they are visiting; in turn, they would receive a pass to go into the jail.

However, in practice, this procedure is loosely followed since the correctional officers do not verify whether the attorney has signed the book located on a counter next to the window. Some attorneys were observed to have signed only their names, while others simply did not sign at all. As long as they had their bar card, they were admitted inside. No differentiation is made in this process, as is required, between public defenders and private attorneys. This makes data on inmate interviews much more difficult to acquire since there is no list indicating which inmates have public defender representation, resulting in very limited and underrepresented sample of clients interviewed for this

study. The County Jail is implementing its visitation module during the fourth quarter of 2008 that will address the issue of tracking visits by the OPD staff.

Strategic Plan: Initial Steps

Any strategic plan for improving the efficiency and effectiveness of the Office of the Public Defender requires changes within the office itself and cooperation with the greater criminal justice system at large. The culture of delay has been identified as the single most curable problem in the criminal justice system as a whole. This culture is system-wide, but there are changes that can be made within the office and in coordination with the courts which can alleviate many of these problems. The following is a summary of recommendations.

a. Strengthen Leadership

Top Management

A leader needs to regularly remind those whom he leads of their ethical standards and role, and to establish a structure that encourages performance in these areas. The Chief Public Defender was appointed four years ago and has not received any management training. Apparently, there was an assumption that since he had been in the office for many years, he would know everything necessary to be the Director. However supervising peers and friends is challenging under the best of circumstances. In the stressful environment of OPD, it is critical that he develop true management skills, including setting standards and goals, being visible among the attorneys, setting high expectations, and demonstrating a leadership state of mind. In interviews and follow-up questions, it became apparent that the Director was not aware of or interested in management or leadership.

In the alternative, other personnel changes should be investigated, including recruitment of a strong manager, perhaps a non-attorney, who preferably would have experience in a large law office or even a public defender's office in another large city.

Personnel Practices

The practice of attorneys working part-time for OPD and maintaining private practices should be discontinued as soon as legally possible. This practice fosters a mentality that is counterproductive to the goals of the OPD. Attorneys who make more money representing private clients will undoubtedly prioritize the needs of those private clients above the needs of OPD clients. The culture that currently exists, wherein attorneys put their own schedules above the needs of OPD clients can only end by eliminating OPD attorneys' private practices.

OPD supervisors also need training in how to supervise their teams and how to respond to the office's serious management needs.

The majority of all employees in the OPD are union employees and are subject to the terms of a collective bargaining agreement. Nonetheless, OPD's personnel structure should be reconfigured to provide for multiple grades of Public Defenders (PD 1-2-3-4) with corresponding step increases based on performance criteria. The ultimate structure should resemble the District Attorney's Office, which is divided into specialized units that provide attorneys with the opportunity to increase their income, improve their overall legal skills, and receive good supervision (see Appendix E, item 8). To accomplish this goal the County will likely have to renegotiate the collective bargaining agreement.

Turnover is costly to the defendants and the County. The consensus is that junior attorneys are lost because they are unable to provide for themselves (and repay their law school debts) on the current County PD salary, in spite of a 3% increase, annually (also subject to collective bargaining). Low morale and low salaries, reinforced by an external and internal perception of the OPD as a training ground for private practice, encourage turnover in two to three years. Attorneys are not leaving the practice of law, but rather are leaving the OPD. One manager commented, "We expect lawyers to leave in three to four years."

It should also be noted that among the very experienced attorneys, there was definite dissatisfaction with salary both at their end of the scale and at the other end of the spectrum. The problem of paying student loans will likely result in some resignations among younger attorneys. "A \$15,000 annual increase would make all the difference in the world," was a typical comment from several of the disheartened veterans.

As part of this restructure, level 4 attorneys should be the most experienced and most highly paid trial attorneys in the office. Part of their duties should be supervisory. Many of the problems of reassignments, consolidation of clients' cases, and late conflict declarations which cause many of the delays in processing cases through the courts could be remedied by having level 4 attorneys who help with these supervisory assignment and case processing duties. Also, the most experienced trial attorneys in the office are also usually the most respected role models for younger inexperienced attorneys. Offering them the highest paid positions and supervisory and mentoring duties is good for morale for both supervisors and young attorneys who can look up to them and go to them for advice when needed. These attorneys will need training in supervision and administrative functions. They will also need to be involved in the culture of change in philosophy from the excessive continuance practices which have existed in the Allegheny County Courts for years. Training these supervising attorneys in the new culture will allow them to lead by example.

Training

Comprehensive training for *all* staff is needed, in addition to attorneys (see Appendix E item 9). One major need for training is in the area of Legal Ethics. The casual practice and the attitude of "going along to get along" result in inattention to ethical rules, specifically in regards to conflicts of interest and violation of ethical canons.

It is unclear whether the OPD has a current written policy defining conflict of interest or a policy on when and how new hires are to be trained. If no such conflict policy exists, an experienced attorney should develop one, in writing, which includes all current legal authority, for distribution to all staff attorneys. It also appears that the Office has no regular refresher classes on ethics. Both are badly needed.

The position of "Training Coordinator" should be created so that one experienced attorney could coordinate and develop on-going training programs for all attorneys.

b. Facilities

Additional office space adjacent to the OPD offices or on other floors in the COB building needs to be occupied, so that the attorneys can have decent offices that allow private interview spaces for client and witness interviews near the main lobby. (See Appendix E item 4.)

The filing system needs to be cleaned up and organized with some new centralizing and indexing equipment, so that it is cohesive and accessible. Planning should begin for the steps needed to move to a digital file system that would only create hardcopies of those files immediately needed by an individual attorney. As stated on page 13, a position for an accounts manager/records person needs to be established for these important functions.

c. Information Technology

Necessary linkages need to be provided in order to use the K drive as a research resource for new cases, opinions, trial strategy analyses, and discussion and sharing of motions. Brief bank software should be purchased to facilitate storage and retrieval of commonly used briefs, and templates should be developed for the most commonly used briefs and motions. The potential use of small laptops versus desktop machines should be evaluated. The electronic delivery of discovery materials, instead of burning them to CDs, must be accelerated. A CMS that will be both compatible with Pennsylvania JNET and Allegheny County requirements, but which will also serve the needs of a large urban public defense office, needs to be evaluated and acquired. Finally, the office should be immediately given appropriate and carefully controlled access to the Allegheny criminal justice information system (CPCMS).

d. Interdisciplinary Model

Adopt an interdisciplinary model of representation including hiring social workers, law clerks, and paraprofessionals to relieve attorneys from the responsibility of working with community programs and service providers to develop alternative sentencing options for their clients.

e. Pretrial

Reinstitute pretrial as *the* meaningful stage at which cases are assessed and settled, if possible. This would also solve the consolidation problem. In the "Action Plan" a detailed proposal for a mandatory settlement conference for all in-custody defendants is included which will require cooperation with the courts and the Office of the District Attorney. Implementing such a program at the earliest possible time would help to alleviate the problem of long delays between the time of pretrial and preliminary hearing described on page 12 of this assessment. It would also serve to reinforce the need for internal improvements in case assignments and initial in-custody attorney/client interviews.

The County needs to make sure there is a sufficiently qualified clerical staff for pretrial events, which are both staff and paperwork intensive.

Conclusion

The above chart summarizes the key findings and recommendations. It is intended to be a summary and reference for implementing critical changes that are expected to have a positive impact on the culture and processes of the OPD. However these issues must also be analyzed in the context of the criminal justice system as a whole. The system, which impacts the work of the OPD, must be carefully reviewed as well to establish root causes and possible solutions to inefficiencies and delays.

ILPP Findings	Recommendations
No clear outline of OPD's purpose exists, nor is any aspect of this key organizational feature imbued with real leadership or direction.	The County should require a reorganization of the OPD, to include a policy and procedure manual, annual performance reviews, regular attorney meetings, and standard-setting for each division.
The strategies of the OPD are flawed by unsystematic assignments of attorneys to courts and by the lack of norms concerning minimal practice management or expectations.	Simple and clearly written policies need to be developed in a form that will be actively used by attorneys in the office to create a culture of accountability.
The structure of the OPD is not well adapted to efficiency because it is not maximizing or even properly managing the use of scarce personnel resources.	The OPD personnel structure should be reconfigured to provide for multiple grades of public defenders with corresponding step increases based on performance criteria.
ILPP finds that the OPD is missing a rewards system in terms of salary, grades, and support systems. Furthermore, the lack of management and supervision may actually provide disincentives to timely completion of required work.	Policies on office coverage and attorney time in the office need to be established, explained, and enforced. Supervisors should be able to trade time at work, where extra hours have been required, for time off.
ILPP finds that the means for doing OPD's work are highly limited. Deficiencies in space, technology, and filing procedures are evident.	Additional office space must be located and the file managing system needs to be cleaned up and organized. The IT architecture of the office must be improved.
ILPP finds that the director and managers, through conflict avoidance and lack of training, undermine discipline and productivity.	OPD supervisors need training in how to supervise their teams and how to respond to the office's serious management needs.
ILPP finds that there is no one in the OPD who is providing leadership for the organization in order to maintain the vigor and balance of its mission, strategies, structure, incentives, helpful mechanisms, and relationships.	Leadership must be strengthened and other personnel changes should be investigated.

The Action Plan

The County is expected to lead the implementation of these recommendations. The vast majority of the recommendations are within the authority of the County and the ethical duties of the Public Defender (OPD) to their clients. Sustainable improvement of the quality of representation afforded indigent defendants in Allegheny County requires complementary changes in the culture of the Criminal Division of the Court of Common Pleas.

If most of the following recommendations are implemented in a rational, careful, and strategic manner, with attention to transparency and the active engagement of the attorneys and staff in the OPD, the County can expect the results which it anticipated from previous investments in the OPD, i.e., a well managed system of indigent representation that meets Constitutional mandates and is cost efficient. Support from the Court of Common Pleas Criminal Division and in some cases the District Attorney will be required to fully implement the recommended changes in policy and procedure. It can reasonably be anticipated that due to the process of reorganizing the OPD, which could take 12-18 months, there may be some reassignment of cases and personnel which may impact the courts.

Report recommendations have been compiled into tables to facilitate systemic planning. The most critical are analyzed for implementation issues.

Generally, the action plan treatment of the most important recommendations below provides all or most of the following information:

Recommendation:	A brief statement of the recommendation.
Objective:	Supporting principle, e.g. improved representation, reduction in delays, cost savings, etc.
Lead Agency:	Agency or agencies with statutory and or administrative/operational responsibility.
Logistics:	Implementation details and issues.
Costs:	Estimated costs and other resource considerations, in general terms.
Pros/Cons:	Policy benefits and disadvantages of the proposal.
Savings:	Estimated savings or approximate impact, formulated conceptually.

- Time Frame:** Recommended timing (Stage 1, 2, 3, or 4).
- *Stage 1:* Implement immediately. These policy-oriented or fundamental changes are critical and should happen now, or as soon as possible.
 - *Stage 2:* Implement shortly, within this next coming fiscal year. These recommendations require planning and/or regular funding.
 - *Stage 3:* Implement after review and/or when funding is available. These are mid- to longer-range options.
 - *Stage 4:* Implement after further review, over time.
- Priority** Recommended level of importance:
- *A:* Directly instrumental to achieving overall goals, eliminating acknowledged deficiencies, and achieving measurable efficiencies.
 - *B:* Important.
 - *C:* Very helpful and needed

Costs and Savings

In the discussion of very rough costs and savings, the following general terms are used:

1. **"Minimal" cost:** No new staff or buildings are needed. The cost might involve some reassignment of staff time to new or alternate duties.
2. **"Indirect" or "Contingent" savings:** These savings result from the actions of the group, coordinator, etc., not from the mere establishment of the position or function. Also, most savings are dependent on the outcome of future findings, so they cannot be quantified more specifically than "major," meaning millions; "substantial," meaning hundreds of thousands, or "moderate," meaning \$10K to \$100K.

"Minor" costs: Usually under \$25K.

The Administrative Judge of the Court of Common Pleas Criminal Division should convene a committee to review internal court procedures to insure the timely and orderly management of cases.

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RECOMMENDATIONS

Recommendations to be Implemented by the County							
Recommendation	Priority			Implementation Time Frame			
	A	B	C	Stage 1	Stage 2	Stage 3	Stage 4
1. Require the reorganization of the Office of the Public Defender (OPD).	•			•			
2. Authorize and fund a new position of Assistant Public Defender	•			•			
3. Detail an experienced attorney with management and policy experience to assist the Director in the implementation of the Action Plan.	•			•			
4. Ensure that there is adequate access, space, and furnishings for OPD attorneys to conduct client interviews and for trial preparation in ACJ.	•			•			
5. Contract for LEXIS/NEXIS services for use by the OPD.	•				•		
6. Assign a team of qualified space designers in conjunction with OPD to assess the needs for more office space and obtain additional office space, preferably on the same floor as OPD, but at minimum in the same building.	•				•		
7. Conduct a salary study to adjust salaries of attorneys to be in parity with the Allegheny County District Attorney attorneys and comply with the ACLU consent decree.	•				•		
8. Conduct a workload study for all attorneys and support staff to determine equitable caseloads.		•			•		
9. With OPD, the County should review computer and internet access and usage to provide attorney's and support staff access as needed to a computer and internet access.		•			•		
10. With OPD representatives, the County HR should explore revising the personnel structure to create a structure with multiple grades for attorneys, with corresponding step increases and increases for specialized skills, based on performance criteria.	•				•		

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Recommendations to be implemented by the OPD							
Recommendation	Priority			Implementation Time Frame			
	A	B	C	Stage 1	Stage 2	Stage 3	Stage 4
11. The OPD "target team" should review the paper flow within OPD from jail lists, to jail interview, to conflict checks; opening new files; and tracking case information into the file including client correspondence, investigation, discovery, checklists on file contents, automatic prompts to complete file, e.g., client reminder letters, witness follow-up, etc.	•				•		
12. Within six months, the OPD should conduct performance reviews for all employees and annually thereafter, or more often as appropriate.		•			•		
13. The OPD should have a comprehensive Office Manual that includes job descriptions and performance standards, organizational structure, internal communication, a trial practice manual, and performance standards for each unit and support staff.	•			•			
14. The OPD director should require that each supervisor/deputy director prepare a written job description that includes job duties and describes at least his/her qualifications to supervise, accomplishments, training needs for the unit and priorities for improving unit management and performance.	•			•			
15. The County should assign IT personnel with the involvement of the OPD to fully install the necessary K drive linkages throughout OPD.	•			•			
16. With the County, personnel from OPD should establish a Q/A protocol consisting of weekly random reviews of case files and conferences with attorneys individually on case preparation	•			•			
17. With the help of Human Resources, OPD should study personnel contracts and union rules. Develop a way to eliminate part-time attorneys who practice law on the side immediately if possible.	•			•			
18. The OPD should establish an internal committee to review conflict policy and implement mandatory training for all attorneys specifically on communication with clients and conflicts of interest.		•			•		
19. The leadership and management of OPD including unit supervisors should be provided with management and supervision training based on best human relations practices,		•			•		



ALLEGHENY COUNTY OFFICE OF THE PUBLIC DEFENDER ASSESSMENT

specifically for law offices.							
20. The OPD should create an internal problem solving "target team" with a representative from each unit and support staff that meets at least monthly and is in communication with the Director to solve problems and set priorities.		•			•		
21. Schedule monthly <i>All OPD Meetings</i> with agendas distributed in advance and open to all staff. Monthly meetings could give way to quarterly meetings as the reorganization becomes complete.		•			•		
22. For six months, assign one attorney to supervise jail interviews, provide training on interviewing clients, and monitor conflict checks, the opening of files, and checking for multiple cases. Weekly reports should be made to the Director and the target team.		•				•	

Recommendations to be Implemented by the Court of Common Pleas							
Recommendation	Priority			Implementation Time Frame			
	A	B	C	Stage 1	Stage 2	Stage 3	Stage 4
23. The Administrative Judge of the Court of Common Pleas Criminal Division should convene a committee to review internal court procedures to insure the timely and orderly management of cases.	•			•			
24. The Court of Common Pleas Criminal Division should revise and enforce discovery rules to expedite the timely and continuing production of discovery, hopefully by electronic means.	•			•			
25. Enforce the requirement of written motions for continuances establishing <i>good cause</i> by either OPD or ODA and if necessary adopt appropriate rules.	•			•			
Adopt rules requiring meaningful and timely pretrial hearings in all cases.	•			•			
26. The County should work with the Court of Common Pleas to arrange access for the OPD to CPCMS.	•				•		
27. The Court of Common Pleas Criminal Division should adopt Trial Court Performance Measures to guide the assignment and management of the criminal calendar.		•			•		

28. Adopt a calendar management system that emphasizes flexibility, accountability, and timely use of judicial resources.		•			•		
29. The expedited early disposition court should be assessed to determine its effectiveness in comparison to individual calendaring and any necessary modifications to policy or procedure made.		•				•	

Recommendations to be Implemented by the Sherriff's Department							
Recommendation	Priority			Implementation Time Frame			
	A	B	C	Stage 1	Stage 2	Stage 3	Stage 4
30. The County should require the Sheriff to review ACJ procedures for the production of inmates for court in a timely manner and tracking conflicting court dates/orders.		•			•		

**ACTION PLAN FOR
SELECTED AND MOST IMPORTANT
PRIMARY AND SECONDARY RECOMMENDATIONS**

The County

1.

Recommendation: The County should require the comprehensive reorganization of the Office of the Public Defender.

Objective: To establish the organizational structure of the OPD, which will support and sustain the provision of constitutionally competent legal representation to indigent clients with accountability for the public. To facilitate an atmosphere of team-building among management.

Lead Agency: County

Logistics: OPD will have to be involved and take ownership of the process and the process requires facilitation. This process could be accomplished by means of a facilitated retreat involving professional management consultants or volunteer managers from large public defender offices throughout the country. The use of managers from successful public defender offices would be ideal and would provide the kind of leadership and mentoring needed in this office. Public Defender managers are collegial and long-term relationships could be established with successful leaders.

Cost: Minimal if use of local human resources professionals is adequate. If outside professionals are involved, costs may be higher, sometimes as much as \$200 per hour plus travel and lodging. If volunteer managers from other public defender offices are utilized, travel and lodging costs would be incurred.

Pros: Reorganization is overdue and offers a structural means of inserting accountability mechanisms into every unit of OPD.

Cons: Requires dedicated time from OPD management, some research, various related work, and facilitation to maintain momentum and monitor the process.

Savings: Actual savings in dollar amounts are difficult to quantify but accountability is essential to ensuring that the public funds appropriated to OPD are well used.

Time Frame: Start immediately, Stage 1

Priority: A

2.

Recommendation: The County should authorize and fund a new position of Assistant to the Director of OPD.

Objective: Respond to an acknowledged core deficiency in management expertise and capability, and compensate for the excessive span of control between the Director and the Deputy Directors. This position should require a JD and management experience, and should be filled as soon as the appropriate person can be hired; an interim or acting capacity should be considered if there are delays in the hiring process.

Lead Agency: County

Cost: Recruitment, screening and hiring a new employee plus the annual cost of the position plus benefits (\$75,000- 80,000)

Pros: Much improved communication, strengthened infrastructure, and day-to-day management

Cons: Adds another position to OPD budget

Savings: None in short term, but significant over time through improved accountability for staff and resources.

Time Frame: Stage 1

Priority: A

3.

Recommendation: The County should assign an experienced lawyer with management and policy experience to assist the Director in the implementation of the Action Plan and seek the advice of outside public defender managers willing to assist.

Objective: To accelerate the OPD reorganization through providing immediate support to the Director

Lead Agency: County

Logistics: *While the plan is being implemented, the assistant would give up other duties and work full time with the Director. Outside public defender managers could be utilized when advice and assistance is needed.*

Costs: Transfer of duties to another employee in the interim

Pros: The Action Plan is multifaceted and requires a clear "hands-on" approach that cannot be accomplished by a single individual.

Cons: May cause some disruption in originally assigned duties of the staff member detailed to OPD

Savings: Substantial in terms of saved time and efficiency

Time Frame: Stage 1

Priority: A

4.

Recommendation: The County should provide adequate access, space, and furnishings for OPD attorneys, paralegal and investigators to conduct confidential client interviews and for trial preparation both inside ACJ.

Objective: Protect Constitutional rights of defendants, improve communication between OPD attorneys and clients, and expedite case preparation

Lead Agency: County

Logistics: May require modifications of procedure and space allocation. Coordination with OPD as to needs is critical.

Costs/Savings: Enhances early case preparation through thorough investigation and improved attorney-client communication.

Pros: Better use of attorney time and improved communication with clients

Cons: May require access to telephones, copiers

Time Frame: Stage 1

Priority: A

5.

Recommendation: The County should contract for LEXIS/NEXIS services for use by the OPD.

Objective: Essential to competent representation is ready access to legal authority and commentary. LEXIS/NEXIS is the recognized national provider of law office legal research technology. Access to this system would be the minimal standard for any law office.

Lead Agency: County

Logistics: Revise existing contracts to ensure that each attorney and paralegal has an individual password with unlimited usage.

Cost: Minor. Some increase in annual contract cost can be anticipated but may be adjusted for off-site coverage.

Savings: Should result in significant and indirect savings by improving quality of representation by providing attorneys and paralegals with direct access to research capability for trial preparation, pre-trial motions, and argument. This may also reduce demand on secretarial time.

Pros: This would significantly raise the professional quality of the office and improve retention.

Cons: Costs

Time Frame: Stage 2

Priority: A

6.

Recommendation: The County should assign a qualified space planner in conjunction with OPD to assess the need for more office space and obtain additional office space, preferably on the same floor as OPD, but at a minimum in the same building.

Objective: Provide adequate client interview and work space for staff, including private offices for attorneys.

Lead Agency: County

Logistics: Assess space needs, available county space, and relocation

Costs/Savings: Additional office space and costs of relocation of other county functions, if necessary

Pros: Improve morale, ensure confidentiality of client and witness interviews and more efficient use of time, and improve trial preparation and retention of attorneys and staff. Keep attorneys in office to encourage adequate preparation for court.

Cons: None

Time Frame: Stage 2

Priority: A

* 7. *[Handwritten scribbles]*
Recommendation: The County should conduct a salary study to make sure that the salaries offered are in parity with the salaries for attorneys with comparable experience in the Allegheny County District Attorney's Office and comply with the ACLU consent decree.

Objective: Establish an OPD that meets or exceeds Constitutional minimum standards of representation. Maintain a professional office of well-trained and experienced career public defenders, capable of handling the most serious cases and to eliminate the perception that the OPD is a "training ground" for future private attorneys. Improve morale and reduce attrition.

Lead Agency: County

Logistics: May require some outside assistance in working with the County HR; will require the elimination of the practice of attorneys in OPD working part time and maintaining a private practice.

Costs/Savings: This study might produce findings that the salaries are not at parity.

Pros: Better use of resources, quality of representation, and retention

Cons: Will require additional appropriations

Time Frame: Stage 2

Priority: A

8.

Recommendation: The County should conduct a workload study for all attorneys and support staff to determine equitable caseloads.

Objective: Obtain an objective review of OPD management and internal operations, reduce staff turnover, and improve representation

Lead Agency: County

Cost: Minimal, may require contracting with outside professionals who have conducted similar studies in offices providing indigent representation or may utilize the assistance of professional indigent defense groups like NLADA or NCDA, perhaps at a lower cost.

Pros: Provide objective guidance to the County Council in making budgetary appropriations

Cons: Time consuming and will require identifying and contracting with an appropriate consultant to conduct the study

Savings: Contingent

Time Frame: Stage 2

Priority: B

9.

Recommendation: The County with OPD staff should review computer and internet access and usage to provide attorney's and support staff access, when needed, with a computer.

Objective: Improve the efficiency of the OPD and reduce secretarial costs

Lead Agency: County

Logistics: Assessment by staff, review of current budget appropriations, and expedite purchasing, if necessary.

Costs/Savings: If current appropriation is inadequate, additional funds will be required. Training costs should be included or time off to attend training offered in other county departments. Computers save time and therefore, overall, savings can be expected.

Pros: Computer and internet access is a minimum requirement of any law office.

Cons: May require additional funds

Time Frame: Stage 2

Priority: B

* 10.

Recommendation: The County HR with OPD representation should explore revising the OPD personnel structure to create a structure with multiple grades for attorneys, with corresponding step increases, based on performance criteria. The process should include the elimination of part-time OPD attorneys and prohibit staff attorneys from engaging in private practice on the side.

Objective: Create a personnel structure that matches the service being provided, reward good performance with salary increases and advancement opportunities, and create a work environment that will attract and retain the most qualified attorneys. Pay equity with attorneys from the Office of the District Attorney should be a goal.

Lead Agency: County and OPD

Logistics: Review personnel structures within the County, specifically the District Attorney Office and offices in comparable jurisdictions for alternative models

Costs/Savings: This will likely require salary increases, but would limit the cost of constant turnover requiring the replacement of experienced attorneys with inexperienced attorneys and the resultant cost of training.

Pros: Improved accountability, recruitment and retention

Cons: Will have to renegotiate collective bargaining agreement

Time Frame: Stage 2

Priority: A

11.

Recommendation: The OPD "target team" should review the "paper flow" within OPD, including the creation of jail interview lists, jail interviews, conflict checks, requirements for opening a new client case file, the existence of multiple cases for individual clients, client correspondence, investigation, discovery, automatic prompts to complete the file, checklists on file contents, and forms, e.g., client reminder letters, witness follow-up.

Objective: To establish a file system that strongly supports case preparation and disposition

Lead Agency: OPD and County

Logistics: Time consuming process that should involve a trained IT person for data processing efficiency.

Costs/Savings: This will require a diversion of staff time from other duties, which will have to be planned.

Pros: Having case files organized, accessible and complete will make case preparation easier and facilitate the early and accurate assessment/disposition of cases.

Cons: None

Time Frame: Stage 2

Priority: A

12.

Recommendation: Within six months, the OPD should conduct performance reviews for all employees and annually thereafter, or more often as appropriate. (Reviews should begin during the first quarter of 2009.)

Objective: A comprehensive review of personnel strengths and weaknesses subject to collective bargaining agreement, with salary advancements commensurate with performance.

Lead Agency: OPD and County

Logistics: Notice and training of evaluators will be required. This is a supervisory function to be developed with experienced human resources specialists and in accordance with county procedures. Advice from outside public defender agencies should be obtained to adapt performance standards to attorney professional conduct requirements.

Costs/Savings: Staff time, specifically from supervisors

Pros: Better use of resources, identification of training needs. Motivation for a higher level of representation for the offices' clients.

Cons: Good evaluations require training for evaluators, which is time consuming.

Time Frame: Stage 2

Priority: B

The OPD

13.

Recommendation: The OPD should have a comprehensive Office Manual that includes an explicit mission statement, organizational structure, job descriptions and qualifications, internal communication, trial practice standards, and performance standards for each organizational unit, including support staff.

Objective: Establish a reference for staffing patterns, standards of performance, with explicit expectations, definitions of the responsibility of each internal unit, and guidance regarding trial practice, including interviewing, case analysis, research, witness preparation, examination of witnesses, etc.

Lead Agency: OPD

Logistics: Use reference manuals from comparable jurisdictions to expedite the drafting of the Manual. This could be included as part of a management retreat concept or allocated to the responsibilities of an experienced attorney in the office.

Costs: Minimal

Pros: Sets basic organizational standards, rules and methods of communication; reinforces shared expectations and strengthens accountability

Cons: None

Savings: Major over time; substantial immediately

Time Frame: Start immediately, Stage 1

Priority: A, Critical

14.

Recommendation: The OPD director should require that each current supervisor and deputy director, prepare a written job description that includes job duties and describes his/her qualifications to supervise, accomplishments as a supervisor, use of performance measures for personnel supervised, supervisory training needs, and an analysis of OPD with recommendations for improvement.

Objective: Identify attorneys and staff who are willing and able to supervise, identify their training needs, appoint those attorneys as supervisors, and engage supervisors in the reorganization process.

Lead Agency: OPD

Logistics: This review should be completed within a brief (two week) period by the Director in conjunction with a consultant and a representative from County HR.

Cost: Minimal

Pros: This recommendation responds to one of the regularly identified weaknesses in OPD and is essential to a successful reorganization. The active involvement of supervisors is essential to encouraging staff ownership of the process and identifying obstacles to reorganization. Good supervision is an important tool to reduce turnover while improving the quality of representation.

Cons: Takes time away from other duties and reorganization may result in short term disruptions due to replacement of supervisors. This probably requires notice to the bargaining unit.

Savings: Supervisors are the key to case management within the OPD, making the best use of attorney and staff time, and reducing turnover.

Time Frame: Stage 1

Priority: A, Critical

15. ✓

Recommendation: The County should assign IT personnel to fully install the necessary K drive linkages throughout OPD.

Objective: To set up a reliable mechanism for intra-Department communication and coordination and sharing information.

Lead Agency: Executive, OPD

Cost: Minor

Pros: Improves sharing of information, including pleadings, research and information on witnesses/jurors, and makes valuable resources universally available, e.g., a brief bank.

Cons: May require some training

Savings: Major, over time

Time Frame: Stage 1

Priority: A

16.

Recommendation: OPD should establish a Quality Assistance Protocol (Q/A) that includes weekly random review of case files by a Supervisor and conferences as needed by the office's second in command, with attorneys individually on case preparation.

Objective: Insure that case files are complete and updated; improve trial preparation and communication with clients.

Lead Agency: OPD

Cost: None

Pros: Q/A protocol will provide an *on the spot* remedy for potential problems as well as prompt feedback to management regarding needs for changes in procedure, resources, and training.

Cons: Takes time away from other duties

Savings: Significant in short and long term

Time Frame: Stage 1

Priority: A

17.

Recommendation: With the help of Human Resources, study personnel contracts and union rules, Develop a way to eliminate part-time attorneys who practice law on the side immediately if possible. If contracts are already in place, either buy them out or let them expire.

Objective: To end a practice that is antithetical to the mission of any public defender's office. The competent representation of public defender clients requires loyal and zealous representation of each individual client. To establish a team of attorneys who put the interests of public defender clients before any other.

Lead Agency: OPD and Human Resources

Logistics: Identifying union issues, contract issues or county charter issues that may make eliminating this practice difficult.

Costs: If part-time attorneys are under contract or have union affiliation with collective bargaining rights, there may be costs associated with eliminating their private practices. One solution may be to full-time employment or offer buy-outs.

Savings: The savings of running smooth calendars, early disposition of cases, early sentencing and release of in-custody clients is immeasurable.

Pros: Ending the culture of delay which is so costly to the county.

Cons: Resistance from attorneys who capitalize on the practice.

Time Frame: Stage 1

Priority: A

18.

Recommendation: The OPD should establish an internal committee to review the conflict policy and to implement mandatory ethics training for all attorneys, specifically on communication with clients and conflicts of interest.

Objective: Improve case disposition and insure that the OPD provides representation in full compliance with Canons of Ethics at all times.

Lead Agency: OPD

Logistics: This can be accomplished with assistance from other public defender groups. Legal ethics are largely national and organizations such as The National Legal Aid and Defender Association and the National Criminal Defense Association can be of invaluable assistance.

Cost: None

Pros: Ethical law practice

Cons: None

Savings: Significant savings in terms of litigation costs for challenges to representation and the considerable cost of unnecessary conflict defense representation.

Time Frame: Stage 2

Priority: A

19.

Recommendation: The leadership of OPD, including unit supervisors, should be provided with management and supervision training based on best human resources practices and specifically for law offices.

Objective: Improve overall management, accountability and retention

Lead Agency: OPD

Logistics: Identify appropriate local trainers or training programs.

Costs/Savings: Cost of attending programs, ranging from \$500-1,000 each. Or cost of bringing outside experts and managers from other public defender offices to provide training programs (which may be most cost efficient).

Pros: Better use of resources; will produce more skilled supervisors who can solve personnel problems as they arise, make recommendations to improve management, and strengthen lines of communication within the department.

Cons: To be meaningful the training must be repeated and ongoing.

Time Frame: Stage 2

Priority: A

20.

Recommendation: The OPD should create an internal "target team" with a representative from each unit and support staff that meets at least monthly and is in regular communication with the Director to solve problems and set priorities.

Objective: Improve lines of communication within the Department and solve problems quickly when possible

Lead Agency: OPD

Logistics: Assign appropriate people from each unit

Costs/Savings: Time away from other duties but invaluable savings in identifying duplicate efforts at problem solving.

Pros: Improved response time to concerns and sharing of information at all levels

Cons: Time away from other duties

Time Frame: Stage 2
Priority: B

21.

Recommendation: The OPD should schedule monthly All OPD Meetings with agendas distributed in advance and open to all staff. Monthly meetings could give way to quarterly meetings as the reorganization becomes complete.

Objective: Encourage ownership in OPD reorganization and improve communication within the Department. Also, identify training needs and assess problem areas.

Lead Agency: OPD

Logistics: Backup and/or alternative scheduling needs to be arranged for participants to guarantee full court and office coverage.

Costs/Savings: Improved sharing of information

Pros: Improved morale and transparency of decision making

Cons: Time consuming; arranging coverage may be difficult for all staff who might want to participate.

Time Frame: Stage 2

Priority: B

22.

Recommendation: For the next six months, the OPD should assign one senior attorney to supervise jail interviews, provide individual training on interviewing clients, supervise conflict checks, and monitor the opening of case files. Weekly reports should be made to the OPD Director and the target team.

Objective: Determine where there are deficiencies in the early stages of representation and provide on the spot training, recommendations or information, as well as keep the Director and target team informed

Lead Agency: OPD

Logistics: Identifying the appropriate attorney and arranging coverage for his/her cases

Costs/Savings: No additional costs; significant savings in time, reduced continuances, and better use of resources
Pros: Better use of resources
Cons: None
Time Frame: Stage 2
Priority: B

The Courts

23.

Recommendation: The Administrative Judge of the Court of Common Pleas Criminal Division should convene a committee to review internal court procedures to insure the timely and orderly management of cases.

Objective: Objective examination of how the court culture, formal and informal, impacts case management

Lead Agency: Administrative Judge of the Court of Common Pleas Criminal Division

Logistics: Such a committee should include experienced attorneys who regularly handle cases from the OPD and ODA.

Cost: None

Pros: Offers an opportunity for the Court to identify issues that negatively impact case processing and obtain input about solutions from those affected on and off the bench. Also offers the opportunity for communication and discussion of problem areas for the OPD, ODA, and the courts.

Cons: Although committees and procedural change are time consuming and often encounter resistance, improved case management will later result in strong support.

Savings: Significant

Time Frame: Stage 1

Priority: A

24.

Recommendation: The Court of Common Pleas Criminal Division should revise and enforce discovery rules to expedite the timely and continuing production of discovery, hopefully by electronic means.

Objective: To ensure that Constitutional standards are met and reduce the number of continuances based on incomplete or untimely discovery

Lead Agency: Administrative Judge of the Court of Common Pleas Criminal Division

Cost: None

Pros: Improves case management by supporting early disposition of cases, meaningful pretrial hearings, and relieves pressure on trial calendars

Cons: None

Savings: Significant immediately and over time for the courts, court staff, law enforcement by reducing continuances and in improved relations with the general public who can be assured that cases will proceed in a timely fashion to a determination of guilt or innocence.

Time Frame: Stage 1

Priority: A

25.

Recommendation: The Court of Common Pleas Criminal Division should enforce the requirement of written motions for continuances establishing *good cause* by either OPD or ODA and if necessary adopt appropriate rules.

Objective: End the culture of automatic continuances and restore calendar control to the judges.

Lead Agency: Administrative Judge of the Court of Common Pleas Criminal Division

Cost: None

Pros: Restore control of court calendars to judges. Encourage better preparation and organization on the part of the District Attorneys and defense counsel.

Cons: Some resistance to change and could possibly lead to unprepared counsel going forward.
Savings: Significant
Time Frame: Stage 1
Priority: A

26.

Recommendation: The County should work with the Court of Common Pleas to authorize secure access for OPD to CPCMS.

Objective: To enforce timely processing of cases to alleviate and eventually eliminate excessive continuances attributable to delayed or incomplete discovery, conflicting court dates, failure to consolidate cases, and the tardy discovery of conflicts.

Lead Agency: Courts

Cost: Minimal; possible time to add computer capability and training

Pros: The OPD represents the vast majority of criminal defendants and in order to manage appearances and case readiness, needs direct access to the courts' calendars and the capability to obtain, send, and file documents electronically.

Cons: Concerns about secure access. These concerns can be alleviated through technology with password protection, firewalls and confidentiality provisions and with the ultimate prohibition of OPD attorneys conducting private practice on the side.

Savings: Substantial; fewer continuances based on calendar conflicts, expedited filing of motions, and improved exchange of discovery.

Time Frame: Stage 2

Priority: A

27.

Recommendation: The Court of Common Pleas Criminal Division should adopt Trial Court Performance Measures to guide the assignment and management of the criminal caseload.

Objective: Improved monitoring of case management
Lead Agency: Administrative Judge of the Court of Common Pleas Criminal Division
Logistics: May require outside consultant
Costs/Savings: Contracting, possibly through the NCSC (\$15-25,000)
Pros: Better use of time and judicial and staff resources
Cons: May encounter some resistance to change from the bench
Time Frame: Stage 2
Priority: B

28.

Recommendation: The Court of Common Pleas Criminal Division should adopt a calendar management system that emphasizes flexibility, accountability and timely use of judicial resources.

Objective: Improved case management and allocation of judicial resources
Lead Agency: Administrative Judge of the Court of Common Pleas Criminal Division
Logistics: May require outside consultant
Costs/Savings: Contracting, (for example, through the National Center for State Courts) at perhaps \$15-25,000
Pros: Better use of resources and service to the public
Cons: None
Time Frame: Stage 2
Priority: B

29.

Recommendation: The expedited disposition court should be assessed to determine its effectiveness in comparison to individual calendaring. Necessary adjustments should be made in light of this assessment.

Objective: Identify any obstacles to expedited disposition
Lead Agency: Court of Common Pleas Criminal Division, DA, OPD
Cost: None

Pros: Will lead to better allocation of limited court resources. All parties should participate in this assessment to determine future effectiveness.

Cons: Will require some data collection, interviews, and analysis.

Savings: Significant

Time Frame: Stage 3

Priority: B

The Sheriff's Department

30.

Recommendation: The County should require the Sheriff to review ACJ procedures for the production of inmates in a timely manner in court and for tracking conflicting court dates and/orders.

Objective: Reduce continuances based on unavailability of defendants or witnesses, conflicting court dates, and inadequate custodial personnel

Lead Agency: Sheriff's Office

Logistics: Review policy and procedure and internal record keeping

Costs/Savings: Reduce number of continuances and court appearances.

Pros: Ensures that cases are fully ready to proceed to trial, disposition, or sentencing on the date and time calendared

Cons: None

Time Frame: Stage 2

Priority: B

APPENDICES

A. Seven Box Model Chart

B. PD Appendix Data

Figure 1: March-May 2008 Trial Postponement Reasons

Figure 2: Reasons for the Postponement at Trial Level in Criminal Division in 2007

Figure 3: Breakdown of Judges for All Postponements for April 2008

Figure 4: Case Management Capital Budget Request

Figure 5: Budget Narrative

Figure 6: Attorney Records 2008

Figure 7: Attorney Records 2007

C. Model Defender Act Summary

D. Summary 98 ACLU Lawsuit

E. 10 Basic Principles of a Public Defense Delivery System

F. Bibliography

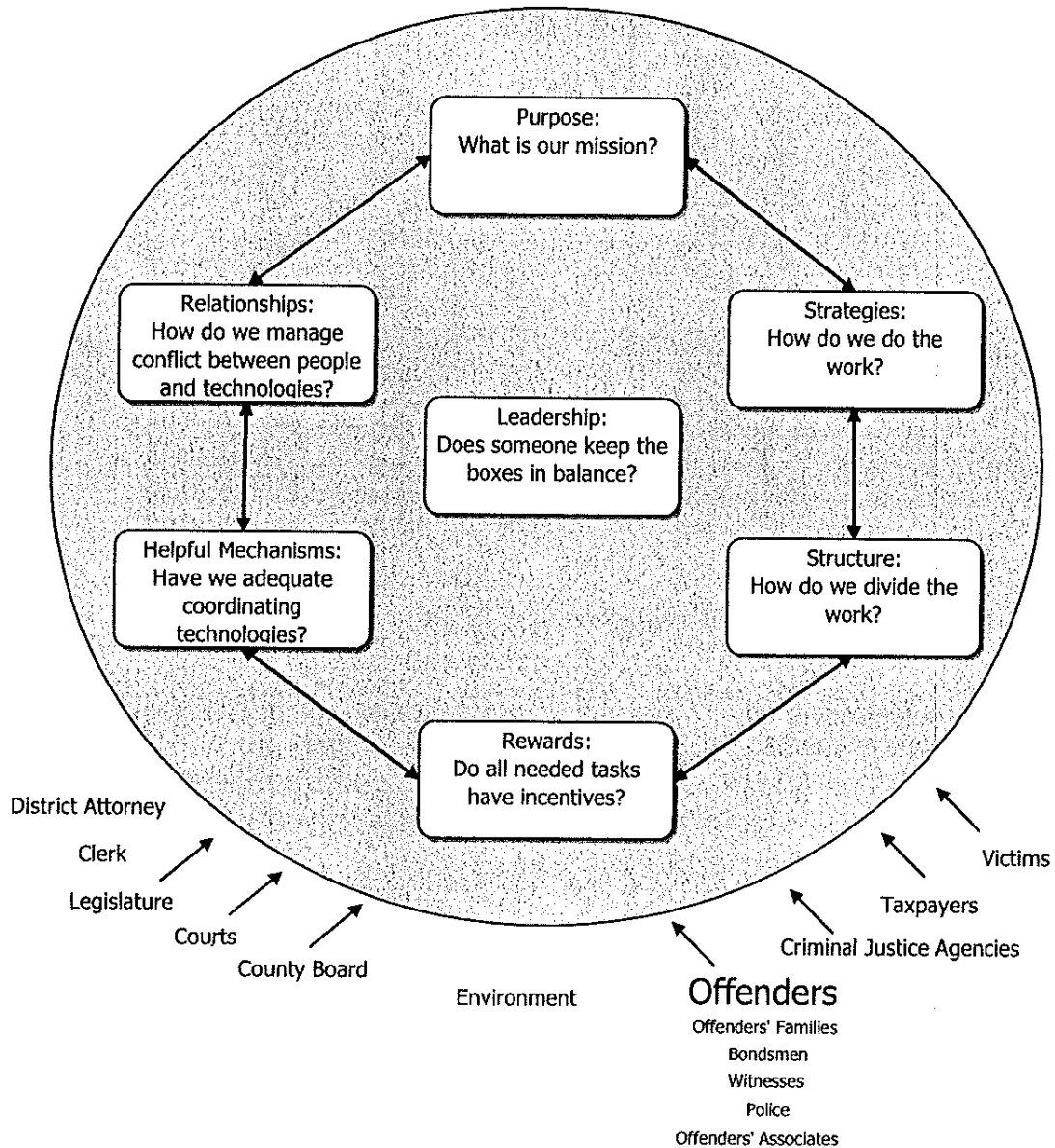
G. Resources

H. Contacts

Appendix A

Illustration of the Seven-Box Model

There are seven organizational processes which should be examined in order to understand the needs of a correctional institution. The model shown below is an attempt to illustrate these seven interrelated processes which can be observed in all correctional organizations.



Reproduced and adapted with permission of M. Weisbord and Organization Research Development, a division of Block, Petralla Associates.
 Source: M. Weisbord, "Organizational Diagnosis: Six Places to Look for Trouble With or Without a Theory." *Group and Organization Studies* (1976) 1:430.

Appendix B

FIGURE 1: March-May 2008 Trial Postponement Reasons

FIGURE 1(A): Reason for Postponements

Reason for Postponements	Counts	Percentage
DACC	2	0.62
Conflict	5	1.56
Drug Court	10	3.12
Private Counsel	10	3.12
586	15	4.67
Mental Health	22	6.85
ARD	25	7.79
Consolidation	32	9.79
Judge	40	12.46
P.D.	44	13.71
Deft.	46	14.33
D.A.	76	23.68
Total	<u>321</u>	

FIGURE 1(B): Breakdown of Postponements by Reasons for Defendants

Reason for Deft. (defendant waiting for entry into program)	Counts	Percentage out of Deft. (46 counts)	Percentage out of reasoning (321 counts)
D.A.	1	1.54%	0.31%
Judge	1	1.54%	0.31%
Private Counsel	1	1.54%	0.31%
DACC	2	3.08%	0.62%
Drug Court	9	13.85%	2.80%
586	10	15.38%	3.12%
ARD	20	30.77%	6.23%
Mental Health	21	32.31%	6.54%
Total	<u>65</u>		

SOURCE: Allegheny Court of Common Pleas

* Created from postponement data sent from Allegheny Court of Common Pleas

FIGURE 2: Reasons for the Postponements at Trial Level in Criminal Division in 2007

Reason	Case Count
Defendant Not Ready - Defendant	6690
Defendant Not Ready - Defense Attorney	5020
Prosecution Not Ready - DA	659
Other	643
Prosecution Witness Unavailable - DA	376
ARD Interview	106
Prosecution Not Ready - Police	96
Pending ARD	76
Prosecution Witness Unavailable - Police	63
Pending Mental Health Court	33
Pending Drug Court	31
Defendant to Obtain Private Attorney or Public Defender	30
Snow Day	15
Pending DUI Court	9
Courthouse Closed	7
Judge is Ill	6
Defense Witness Unavailable - Defendant	4
PSI Not Complete	4
Attorney Unavailable	3
No Information filed by D.A.	2
Hold for Dr. Letter	1
PDQ Interview	1
	13875

SOURCE: Common Pleas Case Management System (CPCMS)

FIGURE 3: Breakdown by Judges of All Postponements for April 2008

*NOTE: ALL JUDGES' NAMES HAVE BEEN REPLACED BY NUMBERS

Primary Person	Continuance Reason	Count of Continuance Reason	Percentage of Count out of Judge's Total
	Defendant Not Ready - Defendant	1	
0113	Defendant Not Ready - Defendant	131	94.24%
0113	Pending ARD	1	0.72%
0113	Prosecution Not Ready - DA	3	2.16%
0113	Prosecution Witness Unavailable - DA	4	2.88%
		139 (12.99%)	
0102	Defendant Not Ready - Defendant	128	92.75%
0102	Prosecution Not Ready - DA	10	7.25%
		138 (12.90%)	
0103	Defendant Not Ready - Defendant	27	22.31%
0103	Defendant Not Ready - Defense	83	68.60%
0103	Other	2	1.65%
0103	Prosecution Not Ready - DA	5	4.13%
0103	Prosecution Not Ready - Police	1	0.83%
0103	Prosecution Witness Unavailable - DA	2	1.65%
0103	Prosecution Witness Unavailable -	1	0.83%
		121 (11.31%)	
0114	Defendant Not Ready - Defense	116	98.31%
0114	Prosecution Not Ready - Police	1	0.85%
0114	Prosecution Witness Unavailable - DA	1	0.85%
		118 (11.03%)	
0106	Defendant Not Ready - Defendant	1	0.87%
0106	Defendant Not Ready - Defense	106	92.17%
0106	Pending DUI Court	1	0.87%
0106	Prosecution Not Ready - DA	7	6.09%
		115 (10.75%)	
0110	ARD Interview	2	2.04%
0110	Defendant Not Ready - Defendant	61	62.24%
0110	Defendant Not Ready - Defense	23	23.47%
0110	Prosecution Not Ready - DA	6	6.12%
0110	Prosecution Not Ready - Police	3	3.06%
0110	Prosecution Witness Unavailable - DA	1	1.02%
0110	Prosecution Witness Unavailable -	2	2.04%
		98 (9.16%)	
0100	Defendant Not Ready - Defendant	15	17.65%
0100	Defendant Not Ready - Defense	35	41.18%
0100	Other	2	2.35%
0100	Pending ARD	8	9.41%
0100	Pending Drug Court	2	2.35%
0100	Prosecution Not Ready - DA	4	4.71%

ALLEGHENY COUNTY OFFICE OF THE PUBLIC DEFENDER ASSESSMENT

0100	Prosecution Not Ready - Police	2	2.35%
0100	Prosecution Witness Unavailable - DA	13	15.29%
0100	Prosecution Witness Unavailable -	4	4.71%
		85 (7.94%)	
0109	Defendant Not Ready - Defendant	75	90.36%
0109	Prosecution Not Ready - DA	8	9.64%
		83 (7.76%)	
0107	Defendant Not Ready - Defendant	69	86.25%
0107	Prosecution Not Ready - DA	8	10.00%
0107	Prosecution Not Ready - Police	1	1.25%
0107	Prosecution Witness Unavailable - DA	2	2.50%
		80 (7.48%)	
0111	Defendant Not Ready - Defendant	31	79.49%
0111	Prosecution Not Ready - DA	3	7.69%
0111	Prosecution Witness Unavailable - DA	3	7.69%
0111	Prosecution Witness Unavailable -	2	5.13%
		39 (3.64%)	
0108	ARD Interview	2	9.52%
0108	Defendant Not Ready - Defendant	8	38.10%
0108	Defendant Not Ready - Defense	9	42.86%
0108	Prosecution Witness Unavailable - DA	2	9.52%
		21 (1.96%)	
0105	Defendant Not Ready - Defendant	3	25.00%
0105	Defendant Not Ready - Defense	2	16.67%
0105	Other	5	41.67%
0105	Prosecution Witness Unavailable - DA	2	16.67%
		12 (1.12%)	
0104	Defendant Not Ready - Defense	5	71.43%
0104	Other	2	28.57%
		7 (0.65%)	
0101	Defendant Not Ready - Defendant	4	57.14%
0101	Other	1	14.29%
0101	Prosecution Witness Unavailable - DA	2	28.57%
		7 (0.65%)	
0112	Defendant Not Ready - Defendant	6	100.00%
		6 (0.56%)	
	TOTAL COUNTS OF CONTINUANCE REASONS	<u>1040</u>	

SOURCE: Common Pleas Case Management System (CPCMS)

FIGURE 4: Case Management Capital Budget Request

SOURCE: Allegheny Office of the Public Defender

Character Totals:	Requested		Adopted		Difference
	Operating	DHS	Total Adopted		
Personnel	5,692,264	4,863,733	578,806	5,442,539	-249,725
Fringe Benefits	2,007,600	1,695,319	198,541	1,893,860	-113,740
Services	411,400	366,400	0	366,400	-45,000
Supplies	51,000	51,000	0	51,000	0
Materials	0	0	0	0	0
Repairs & Maintenance	1,600	1,300	0	1,300	-300
Capital Outlay	7,350	7,194	0	7,194	-156
Recovery / Cont Svcs	0	0	0	0	0
Totals	8,171,214	6,984,946	777,347	7,762,293	-408,921

Personnel Detail

	Requested	Adopted	Difference
Base Salaries	5,103,432	5,103,432	0
Adam Hill (FMLA)	41,725	0	-41,725 not on payroll as of 5/24
Dan Miller (Military Leave)	41,725	0	-41,725 on payroll 5/24
Union Increases	101,976	126,766	24,790
Mgmt Increases	25,029	0	-25,029
USW Settlement	102,000	100,000	-2,000
Total Base Salaries	5,415,887	5,330,198	-85,689
New Positions	50,000	0	-50,000
6 PT Law Clerks	15,600	0	-15,600
3 Seasonal File Clerks	24,378	0	-24,378
Clerk Typist	31,200	31,200	0
Office Manager	25,106	0	-25,106
Legal Secretary	25,106	0	-25,106
Legal Secretary	23,846	0	-23,846
Clerk Typist	25,008	25,008	0
Legal Assistant	38,383	38,383	0
Sr. Investigator	258,627	94,591	-164,036
	5,674,514	5,424,789	-249,725
	5,674,514	5,424,789	-249,725

FIGURE 5: Budget Narrative

The budget increase which would take into account increases in staff, attorneys, management, and systems was made in discussion with the administration. There is no system to request x and then be told no. The discussion centered around 6-8 additional lawyers (3 in trial; 1 in Appeals; 1 in Juvenile; 3 in Prelim). This was based on the caseload data that stated the % increases through our hard data. Also, there was discussion to increase managers in Trial: 1 in Homicide and 2 in trial. This would achieve the highest quality in respect to file review which is the true barometer of what happened in case preparation. Look at a file through the new data management system (infra) and immediately know what was done on the file. The addition of a supervisor in Juvenile and appeals would reduce supervision to a supervisor per 6 lawyers. This would achieve the same result as the increase in Trial. The new structures to encourage stability would be senior lawyers and senior support staff. This would keep the quality lawyers and support staff. Also, per my request as part of the capital budget, \$100,000 has been set aside for a data management system. This would revolutionize the case flow and the ability to review all cases. Also, \$25,000 was set aside for space changes. This ties into the push and success with the Allegheny County Bar association Bd of govs passing a resolution to support our state wide funding initiative (the first Bar Assoc in the state); the letter to the Deputy speaker of the house requesting an audience in Harrisburg; the successful letter to a state senator to be put on the state wide task force studying indigent defense and the funding of PD offices; the future non profit which will fund training and future salaries.

SOURCE: Allegheny Office of the Public Defender

Appendix C

Summary of Model Public Defender Act

Through decades of Supreme Court decisions, it is established that a needy person is entitled to the same protections and rights of representation as a person of adequate means. Not only is the right to counsel absolute, but that right is extended to all aspects of an "adequate defense," including those necessary for investigation and trial. The National Legal Aid and Defender Association created the Model Public Defender Act (MDA) not to define the exact limits of the right to an adequate defense, but to outline some of the protections that a needy person should receive if paid for by the state, and through provisions affecting. The MDA serves herein as a de facto review standard.

Rights include provisions with the necessary pre-sentence investigation and preparation, and the right to be counseled and defended at every stage, including revocation of probation or parole, appeal, and other post-conviction proceedings. These rights are not affected by a needy person having previously provided the benefit at his own expense, or by having waived the right at an earlier stage.

The proper authorities must inform a needy person of their right to an attorney, and if they cannot afford one, must subsequently notify the appropriate public defender. Notification should be given upon detention, formal change, or post conviction proceeding, and may include co-counsel or associate counsel. Attorneys representing needy persons should be given reasonable compensation based on the complexity, time, and other factors of the case. To ensure public defenders meet the same standards as someone otherwise represented, the public defender is entitled to use any state, county, or municipal technical services and facilities available to the prosecutor.

The Defender General's office is responsible for the oversight of the Public Defender system, and has several key responsibilities he or she must carry out to ensure proper functioning of the public defender apparatus. To ensure these responsibilities are paramount, neither the Defender General nor his deputies may practice law outside of their official duties. In order to better provide needy persons with legal services, then Defender General may contact outside organizations that are equipped to provide services and consultation in such areas including the training of public defender, administration of criminal justice, and the administration of the Office of the Public Defender. The Defender General may employ deputies, public defenders, investigators, clerks, stenographers, and other persons necessary to carry out his or her responsibilities. Finally, the Defender General should submit an annual report to the governor and legislature on the number of persons represented, the crimes involved,

Appendix F

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creation of an intake questionnaire to be completed with respect to every client during the initial interview. This document would then be updated with information such as jury trial demand, alibi witnesses, and the facts of any defense no later than the preliminary hearing. In effect, the questionnaire would become a living document that would be revised to include pertinent information by every attorney that would handle the file.

In addition, the Panel also recommended that the OPD adopt a form letter regarding the purpose of the preliminary hearing. This letter would explain the purpose of the preliminary hearing, the duty of the prosecution, and the burden of proof. Due the lack of literacy of many OPD clients, the Panel recommended that employees of the OPD read and explain the letter so that clients understand and acknowledge the purpose of the proceedings. Finally, the Panel recommended that trial counsel review the information in the intake questionnaire prior to the pre-trial conference in order to ensure continuity of representation. In all the instances, employees of the OPD should sign the document to ensure accountability.

On January 14, 2005 the Court determined the Allegheny Office of the Public Defender had sufficiently complied with the disputed terms of the Settlement and Consent Decree. Based on the changes made to the operation and administration of the OPD, the Settlement Agreement and the Consent Decree were terminated.

Appendix E

10 Basic Principles of a Public Defense Delivery System

February 2002-- adopted by the House of Delegates ABA

- (1) The public defense function, including the selection, funding and payment of defense counsel, is independent.
- (2) Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office, and the active participation of the private bar.
- (3) Clients are screened for eligibility and the defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
- (4) Defense counsel is provided sufficient time and a confidential space with which to meet with the client.
- (5) Defense counsel's workload is controlled to permit the rendering of quality representation.
- (6) Defense counsel's ability, training, and experience match the complexity of the case.
- (7) The same attorney continuously represents the client until completion of the case.
- (8) There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
- (9) Defense counsel is provided with and required to attend continuing legal education
- (10) Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

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